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INDIAN CONSTITUENT ASSEMBLY

INDIAN CONSTITUENT ASSEMBLY

BY
CHANAKKYA

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PREFACE

India is now in the throes of a revolution—a bloodless revolution. The Constituent Assembly is to work out the new constitutional adjustments that have to be made and set the ship of a free State on its first journey. It will be necessary to gather the best timber and steel and select the best workmen before beginning work on the construction of this ship. When finished, the latter must look beautiful and imposing to outsiders while proving safe and comfortable to those who have to make their voyage in it. With what amount of success the ship can weather the incidental storms will depend in the quality of its component material and the skill of its makers. Its seaworthiness will depend no less on the ingenuity with which it is constructed than on the alertness and the good sense of its captain. On the political wisdom and technical efficiency of the Constituent Assembly will depend the only progress of the country in the immediate future.

The object of this publication is to set out in proper perspective the conception and development of the idea of a Constituent Assembly for India and the structure and functions of the Constituent Assembly as proposed by the Cabinet Delegation. A chapter is devoted to the discussion of problems which this constitution-making body will have to tackle and the procedure it might adopt in transacting its business and arriving at conclusions. Many a time in the history of Western countries, Constituent Assemblies have played an important role in ushering a new era of con-

stitutional development. A brief account of them is sought to be given with a view to enable the reader to form a comparative study of the Indian type.

In order to make the book specially useful to members of the Constituent Assembly and others who may be particularly interested in its working, an exhaustive list of appendices including various official and party statements made on the subject has been given at the end. A novel attempt has been made to tell the story of the Indian Constituent Assembly with the help of diagrams showing the actual composition of the Assembly at various stages of its development as envisaged in the Cabinet Delegation's Statement of May 19, 1946.

The Author.

FOREWORD

BY

The Hon'ble Sir N. Gopalaswami Iyengar,

C. S. I., C. I. E.

*(Member, Congress Experts Committee on the Constituent
Assembly, Member of the Constituent Assembly
and formerly Dewan of Kashmir)*

New Delhi,

8th December 1946

I am very glad to contribute a short Foreword to this small brochure on the "Indian Constituent Assembly." starting with a rapid sketch of the origin and development of the idea of a Constituent Assembly, the author has in subsequent chapters drawn attention to the important issues that will arise for decision by the Indian Constituent Assembly before a constitution for a free, independent India is finally shaped. I am sure that the publication of this little book at the present juncture will be of use not only to those who will be participating in the work of the Constituent Assembly but also to those outside the Assembly who will be watching its activities with interest, concern and perhaps anxiety. I trust the book will have a good reception at the hands of the public.

N. Gopalaswami

This Book is dedicated to the

" DUMB MILLIONS "

Who will find at last their voice in the
CONSTITUENT ASSEMBLY

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PART I

CHAPTER I.

DEVELOPMENT OF THE IDEA—1922-46

To a people struggling for freedom, the conception of a Constituent Assembly offers many attractions. It crystallises their urge to freedom and gives it a form on which can be built the permanent superstructure of the country's new constitutional edifice. It acts as a clearing-house of different ideologies, offers immense scope for negotiation and compromise and presents a common front against the outside world. The experience of other countries in working out successfully the Constituent Assembly method has encouraged Indian opinion to expect great things from the one proposed by the Cabinet Mission. The Indian National Congress has found it a workable arrangement for the peaceful transfer of power for which it has been fighting all these years. The meeting of the Indian Constituent Assembly marks the beginning of a new and important chapter in the political evolution of India.

Gandhiji's Conception

As early as 1922 Gandhiji had declared that Swaraj will not be a free gift of the British Parliament. It may be recognised by a Statute of the Parliament. But it can only be a ratification of the declared will of the people. Mahatmaji continued. * "The ratification in our case will be of a Treaty

* Dealing with the two conditions attached to the ratification of the constitution drawn up by the Constituent Assembly, Pandit Nehru said : "As regards the question of safeguarding the rights of minorities, we all recognise its importance. No constitution can work unless the minorities are satisfied. We shall not, however, brook any interference on the part of the ruling power on that score if

of which Britain will be a party. Such Swaraj may not come this year, may not come within our generation. But I have contemplated nothing less. The British Parliament, when the time comes, will ratify the wishes of the people of India as expressed not through the bureaucracy but through her freely chosen representatives." Here was the Constituent Assembly in an embryonic stage.

The demand for a Convention or a Constituent Assembly was for the first time made on the floor of the Legislative Assembly by the late Pandit Motilal Nehru in 1924. His suggestion was approved by a large majority of legislators. The Government reaction, however, was quite amusing. Lord Hailey, the Government spokesman in the Assembly, quibbled over the words "responsible government" and "Dominion Status" and proved them to his own satisfaction to be very different things indeed ! The next attempt came in 1927. The Working Committee of the Congress undertook the job of drafting a Swaraj constitution in consultation with other political parties. This constitution based on a Declaration of Rights was to be submitted to an All Parties' National Convention. The latter met in 1928 under the chairmanship of Pandit Motilal Nehru and drafted a constitution of the British Dominion type. This scheme was, however, superseded by the Lahore Congress (1929) which declared India's right to complete independence. Worsening

they arrogated to themselves the functions of an arbitrator. In regard to other conditions laying down that they would have to enter into a treaty with the British Government, I want to make it clear that we shall not accept any dictation. The treaty between the two countries must be on the basis of absolute equality. If the British Government say that they would not accept any constitution unless certain conditions were accepted as part of a treaty, they would resist such a thing which would be an imposition and also an attempt to blackmail us." In his opinion the two conditions were unworkable.

political conditions had queered the pitch for the Congress. The underlying demand continued to be the setting up of a Constituent Assembly deriving its authority from the people and exercising its unfettered freedom to draw up the constitution for a brave, new India.

Birth of the Idea

It was the Faizpur Session (1937) of the Indian National Congress that set the ball rolling and suggested the setting up of a Constituent Assembly to hammer out the constitution of a free India. A resolution said : "The Congress stands for a genuine democratic State in India where political power has been transferred to the people as a whole and the Government is under their effective control. Such a State can come into existence only through a Constituent Assembly, elected by adult suffrage and having the power to determine finally the constitution of the country." It was further decided that after the elections to the provincial legislatures a Convention should be held consisting of Congress members of the various Provincial and Central Legislatures and that this Convention should put the demand for a Constituent Assembly before Indian and world opinion and propagate the idea by all peaceful means.

Pandit Jawaharlal Nehru in a special circular note said : "The idea of this Convention should be explained. It is not a substitute for a Constituent Assembly but a preparation for it....." He referred to such an Assembly as an All India Panchayat which, instead of quibbling over proportions in cabinets and share in the services, which do not affect the masses, would frame a constitution for the real good and betterment of India. He predicted that the Constituent Assembly would meet in the present generation and said : "I am convinced that it will meet before many years are

over and that I shall see India free and independent long before I am dead " This was on January 8th, 1937.

Pandit Nehru's definition

It will be interesting to read Pandit Nehru's views on the subject as they represented also the Congress position and try to understand how far that position has been kept up or made to undergo a change under the pressure of later developments. Clarifying the Congress position in this regard, he said : "India's constitution can only be determined by her own people without the slightest outside interference. This can only be done when the possibility of such effective interference has been removed, that is, when the reality of power, though necessarily the legal forms embodying it, has passed to the people, or at any rate, when the people are on the threshold of power. When we have developed sufficient strength to be on the verge of power or to be in possession of power, then will come the time for a real Constituent Assembly which has the authority to decide and can give effect to its decisions. An Assembly meeting on the sufferance of the British Government or others would be a negation of the very principle and meaning of the idea of a Constituent Assembly. It would be a sham and a mockery. It is absurd to fix a date for such an Assembly now. That day will be fixed soon enough when the conditions for it have risen. We must, therefore, work for those conditions. We must think in terms of power and not of paper constitutions which depend on the good-will of others."

This summing up of the Congress position brought a rejoinder from the *Hindustan Times* of Delhi which challenged Pandit Jawaharlal's conception of a Constituent Assembly and wrote : "Within and outside the Congress, we are afraid, there is a lot of misconception as to what a Constituent Assembly means and implies. There are two clear lines of

thought on the matter in the Congress itself. One section holds as Pandit Jawaharlal does, that a Constituent Assembly cannot be convened, except when the country is in a position to give immediate effect to its decisions. This conception presumes a struggle with the Government and the triumph of the forces of nationalism, for it is inconceivable that the authorities would allow such an Assembly to meet, in any other circumstance. The other school holds that the Assembly can meet, even under present conditions and the sanction behind it will be the unanimity with which the new constitution will have been forged and the persistence with which it will be pressed. Even Pandit Nehru cannot say that the constitution will be a mere paper constitution, as the most powerful Government in the world cannot afford to flout the united wishes of a whole people. As between these two conflicting ideas, it is for the Congress and the country to decide which is more feasible, so that the conception of a Constituent Assembly may not be a mere nebulous idea but become a matter of immediate practical concern." Though events have proved that the *Hindustan Times* was not far wrong in its analysis, in some quarters the doubts that assailed the mind of Jawaharlal in 1937 have still not been cleared. These questions will be discussed at length at a later stage.

The Congress Resolution

The Working Committee of the Congress set out in 1939 the advantages of the Constituent Assembly method in its resolution which read: "The Committee wish to declare again that the recognition of India's independence and of the right of her people to frame their constitution through a Constituent Assembly, is essential in order to remove the taint of imperialism from Britain's policy and to enable the Congress to consider co-operation. They hold that a Constituent Assembly is the only democratic method of determin-

ing the constitution of a free country, and no one who believes in democracy and freedom can possibly take exception to it. The Working Committee believe too that the Constituent Assembly alone is the adequate instrument for solving the communal and other difficulties. This however does not mean that the Working Committee will relax their efforts for arriving at a solution of the communal problem. This Assembly can frame a constitution in which the rights of accepted minorities would be protected to their satisfaction, and, in the event of some matters relating to minority rights not being mutually agreed to, they can be referred to arbitration. The Constituent Assembly should be elected on the basis of adult suffrage, existing separate electorates being retained for such minorities as desire them. The number of members in the Assembly should reflect their numerical strength."

Sir Maurice Gwyer's Criticism

The subject of Constituent Assemblies had caught the public imagination as few other subjects had done till it became the topic of discussion even in the cloistered halls of the Universities. Sir Maurice Gwyer, the then Chief Justice of India, a scholar of eminence and a keen student of constitutional theory and practice, chose it as the subject of his convocation address in December 1939 and told his youthful audience of the Benares Hindu University some of the things the Constituent Assembly had not achieved. A lot had been spoken and written about what such Assemblies *had* achieved how they had canalised revolutionary urge and brought order out of chaos, and organisation out of confusion. It was left to the historical mind of Sir Maurice Gwyer to recall a forgotten chapter of world history and show how the mechanism

According to him, the Constituent Assemblies elected on a wide franchise, which have sought to combine the securing of unity among diverse elements with the writing of the new constitution itself have not always had a happy result. The verdict of history, he claimed, was in his favour. He said : "The French Assembly did indeed produce a constitution on paper but it failed and was succeeded by a dictatorship, because intoxicated with theory, it took no account of realities. Its nineteenth century successor repeated the error and suffered the same consequences. The German Assemblies of 1848 and 1919 were neither of them strong enough to persuade or master their discordant elementsThe Russian Constituent Assembly elected in 1917 by the votes of 45 million people, met only once. Before the day appointed for its second sitting, the Soviet Executive Committee had decreed its dissolution and their soldiers barred all approaches to the place where the Assembly should have met."

At this stage, Sir Maurice briefly examined, by way of contrast, the procedure adopted by Canada, Australia and South Africa for framing their own constitutions. These three constitutions which became law and are still in successful operation have so far not been amended in their fundamental set-up. They continue generally to enjoy the confidence of the peoples for whom they were designed. What was the secret of their success? According to Sir Maurice Gwyer, the secret of success must be found in the fact "that in each of the three cases the body which hammered out the scheme consisted of a very small number of delegates." Sir Maurice argued his case well. And Sir Reginald Coupland added the weight of his own opinion in favour of a body of small size which might carry on its deliberation *en camera*. But Indian opinion had always asked for a Constituent Assembly broad-based on a system of adult suffrage and had sought to draw a line bet-

ween the deliberative aspect of such an Assembly leading to taking of decisions on vital issues and the more technical aspect of the actual drafting of the sections and clauses of the constitution already decided upon. It has been argued that for the latter task a small committee enlisting the services of accredited administrators and experts in constitutional practice should be appointed, while the deliberative functions of the Assembly naturally called for a representative body of adequate size, reflecting every shade of Indian opinion.

Official Recognition and Offer

The first official recognition to the idea of a Constituent Assembly came in the course of the Viceroy's speech of August, 1940. Lord Linlithgow said : "There has been very strong insistence that the framing of that scheme (a new constitutional scheme) should be primarily the responsibility of Indians themselves and should originate from Indian conception of the social, economic and political structure of Indian life. His Majesty's Government are in sympathy with that desire and wish to see it given the fullest practical expression. His Majesty's Government authorises me to declare that they will most readily assent to the setting up, after the conclusion of the war, with the least possible delay, of a body representative of the principal elements in India's national life in order to devise the framework of the new constitution, and they will lend every aid in their power to hasten decisions on all relevant matters to the utmost degree."

Then came the Cripps offer in 1942. Public memory of the events leading up to its failure is still fresh. The saving grace of the Cripps proposals was the precision with which the formula relating to the Constitution Making Body was stated. According to this formula, the entire membership of the Lower Houses of the Provincial Legislatures will, as a single electoral college, elect the Constitution Making Body

by the system of proportional representation. The number was fixed at one-tenth of the number of the electoral college, Indian States are to send in representatives in the same proportion to their total population as in the case of the representatives of British India and with the same powers as the British Indian members. Thus the Constitution Making Body would consist of about 207 members—158 from British India and 49 from the Indian States. Whether this body will truly reflect the interests of the millions of this country is an irrelevant question because its very name "Constitution Making Body" did not claim for it any such representative character. When Professor Coupland suggested a further reduction in the size of this body he perhaps meant to increase only its efficiency. His proposal could not have affected the representative element, anyhow, as there was very little of it earlier. Cripps was not merely clever but very sincere when he refused to give a false name to the Constitution Making Body by calling it a Constituent Assembly.

Sapru Committee Recommendations.

The last unofficial formula on the subject came from the Sapru Conciliation Committee. Here was at once an extremely generous political gesture and a statesmanlike attempt made in the interests of communal harmony. The Committee proposed giving parity to Muslims in the Constitution Making Body as a fair acknowledgement of the election by joint electorates as proposed in the Cripps declaration. It was proposed to distribute the 160 members elected from British India as follows : Hindus excluding Scheduled Castes 51 ; Muslims 51 ; Scheduled Castes 20 ; Special Interests—commerce and industry, land-holders, universities, labour and women 16 ; Indian Christians 7 ; Sikhs 3 ; Backward areas and tribes 3 ; Anglo-Indians 2 ; Europeans 1 and others 1. The Sapru Committee proposals were

published in April and its report in December 1945. The Cabinet Delegation began work in April 1946 and published its proposals on May, 16. We will consider the proposals, in details, so far as they refer to the Constituent Assembly in the next chapter and see how far they have fulfilled public expectations.

Democracy and Constituent Assembly

Democracy has often been described as government of the people, by the people and for the people. Whatever this may mean or may not mean, it clearly implies that the structure of the Government of a politically free country must be drawn up by the people of that country. In other words, it may be assumed that a people who have been able to set up a Constituent Assembly to decide on the design of their new constitution have surely attained political manhood in the eyes of the world. Political freedom does not necessarily and invariably usher in a democratic form of government because there are always fundamental differences of opinion as to what democracy really connotes and how it should be translated into action. The Russians look askance at the Western or European and American forms of democracy and would rate them as capitalist tyranny. It has also been said that individual liberty in America meant only the liberty to sit on a park bench and starve. Not that the Russian Pattern has escaped criticism but the Russian brand of democracy has also come in for a good deal of universal criticism. The Americans have branded it as inefficient and wasteful and unsuited to the growth and development of the human personality in its pursuit of happiness of every kind. In India at present we are not immediately concerned with these larger issues though ultimately we may have to find our own answers to them. Our immediate problem would seem to be the very practical and local one of well and firmly laying down the foundations on which the constitu-

tion of a free India can be raised. In a sense the Constituent Assembly will not stop with laying down the foundations. It will fashion a super-structure which will have a far reaching influence on the future of this country.

“ .. I am led to the conclusion that the way of the Constituent Assembly is the only way. But let it be remembered that this way is not that of advancing step by step to the haven of Dominion Status. It means the creation of a new State, it means walking out and away from the economic foundations and structure of imperialism. This cannot be done by the wisest of lawyers sitting together in conclave; it cannot be done by small committees trying to balance interests and calling that constitution-making; it cannot be done under the shadow of an external authority. It can only be done effectively when the political and psychological conditions are present and the urge and the sanctions come from the masses. ”—Pandit Jawaharlal Nehru in the *Unity of India*.

CHAPTER II

CABINET PROPOSALS—MECHANICS OF CONSTITUTION MAKING

The Indian National Congress demanded the setting up of a single Constituent Assembly for drawing up the constitution of the entire country. The Muslim League wanted two—one for the Pakistan area and the other for the Hindustan. The Cabinet Delegation has decided to set up four,—one for the Indian Union and three Sectional Constituent Assemblies. Sovereignty—the supreme attribute of which has often been claimed to be its indivisibility—has been rent asunder and distributed among host of competing units—the Union, the Groups, the Provinces and States without number. A well-known constitutionalist said : “The proposed Constituent Assembly has been so planned that there would be no sovereignty of Indians as a whole and whatever sovereignty there might be will be fragmented in three parts as a result of the provision for forming a three—sectional constitution. This is a great injustice to the Indian people as it will deprive the provinces of the little autonomy given to them.....I maintain that the group idea itself is a dangerous device to negative the question of the sovereignty of India.”

Multiplication of Sovereignities

The supreme test of the genuineness of a Constituent Assembly is its sovereignty. To set a limit to its powers is inconceivable. *But then the Union Constituent Assembly does

* In the course of a public speech in Delhi, Pandit Nehru said : “It is true that the Constituent Assembly is not the result of a revolution although there were good many revolutionary influences at

not come on the crest of a revolution. Rather it has been claimed as a peaceful substitute for an otherwise bloody revolution by making the transfer of power smooth and gradual. It is a creation—an instrument, if you will—compounded by the British. According to the Socialists, it has none of the attributes of an organic institution. They say : “It starts life as a cripple, finely balanced on a complicated arrangement of crutches. It has to sign on the dotted line, to start with ; it cannot dictate its own terms to the British ; it has to work under the great limitations arising from the restricted electorate that sent it to power and because of the multiplicity of interests it is supposed to represent. It is indeed, true that the Indian Constituent Assembly cannot set its own house in order before the Sectional Assemblies have gone through their jobs. When it meets at last, it will be a glorified *panchayat* committee with a strictly limited agenda before it. To stray beyond the path already marked out for it, a mere majority vote will not suffice but a majority of the representatives present and voting of each

work for years and there is a new outlook in the world, England and India. The Constituent Assembly in which we are going is not a revolutionary body. It is obvious that a revolutionary body cannot be brought into existence by the Viceroy or come as a gift from the Cabinet Mission...Its greatest merit was that although it will be brought into existence by the British Government, they will have nothing to do with it after it has been set into motion. The Constituent Assembly will then be completely sovereign and will be able to do anything. The foreign rulers may be angry with the manner in which the Constituent Assembly conducts its business but they cannot dissolve it. Of course, it can commit suicide, but nobody else can kill it. The ruling power cannot directly influence its proceedings although it can do mischief from behind the *purdah*. It is a fallacy to think that the constitution drawn up by the Constituent Assembly will be sent to London for ratification so that the British Government may put its seal on it.”

of the two major communities.' This means that if, say, 45 Muslim members of the Assembly decide to veto any measure supported by the entire non-Muslim bloc of about 290 members, those 45 Muslim members will carry the day. In other words, the veto power has been placed in the hands of a 12 per cent minority to obstruct the path of a 88 per cent majority. This refers not only to communal questions but to any question which may be interpreted as raising major communal issues.

Here is a unique case of a Constituent Assembly being buttressed with conditions laid down as to how it shall conduct itself both with regard to procedure and with regard to the type of problems it will attempt to solve. Here is a Constituent Assembly, the historical parallels of which elsewhere had prided themselves on their indisputable sovereign status, trying to trim its sails to the new winds of provincial and group patriotisms. The Union Assembly will be only the elder brother of the three Sectional Assemblies which will reign supreme in their own territories in respect of all subjects except the three or four allotted to the Union Assembly. Here is a landscape cluttered up with a bewildering variety of constitution-making bodies, defying outside interference and trying to spread their protecting wings over fresh fields and pastures new.

How the Scheme was hammered out

Let us now state briefly the processes by which the Mission arrived at the particular scheme relating to the Constituent Assembly which was laid before the public on May, 16. It had to reject the idea of holding special elections to the Constituent Assembly on the basis of adult suffrage because the whole business will take a year or two to work out. The only practicable alternative was to utilise the present Provincial Legislative Assemblies as the electing

bodies. But there were two difficulties. The first was that the Assemblies did not bear the same proportion to the total population in every province. With only 10 million people Assam has an Assembly of 108 members while Bengal with her 60 millions can only boast of an Assembly of 250. The other difficulty was a result of the weightages given by the Communal Award under which the Assemblies do not reflect truly the proportionate strengths of the various communities. In Bengal, for instance, the Muslims who constitute 55 per cent of the population have reserved for them only 48 per cent of the total seats and in some Hindu majority provinces the Muslims have been given cent per cent more representation than what is due to them according to their population strength. To redress these inequalities, the Delegation decided to allot to each province a total number of seats proportional to its population, roughly in the ratio of one to a million ; to divide this allocation of seats between the main communities in each province in proportion to their population ; and to enforce the system of separate electorates under which representatives allotted to each community will be elected only by the members of that community in the Legislative Assembly of that province.

The people of India are classified under three heads General, Muslim and Sikh. The "General" includes not only Hindus but all persons who are not Muslims or Sikhs. Because no direct representation has been allotted to smaller communities such as Parsis, Christians and Anglo-Indians, an Advisory Committee is to be set up to deal with the rights of citizens, minorities, tribal and excluded areas. This committee will consist of representatives of minority communities and will report to the Union Constituent Assembly upon the list of Fundamental Rights, the clauses for the protection of minorities, and a scheme for the administration

of the tribal and excluded areas. It will also be their function to advise whether these rights should be incorporated in the provincial, group or Union Government.

It is a three-tier constitution which will be hammered into shape by four different constitution-making bodies. With a sense of humour characteristic of the British race, the British Mission have named the Sections A, B and C. 'A' stands for the predominantly Hindu majority Provinces of Madras, Bombay, Central Provinces, United Provinces, Bihar and Orissa. 'B' stands for the Punjab, N. W. F. Province and Sind. And 'C' for Bengal and Assam. 'A' represents an area of 5,09,374 square miles with a total population of over 187 millions represented in the Constituent Assembly by 187 members, of whom 20 will be Muslims. 'B' represents an area of 1,61,281 square miles with a population of 35 millions represented by 35 members of whom 22 will be Muslims. 'C' represents an area of 1,32,393 square miles with a population of 70 millions represented by 70 members of whom 36 will be Muslims. (These data are shown diagrammatically elsewhere to help the reader take a bird's eye-view of the proposed political set-up at a glance.)

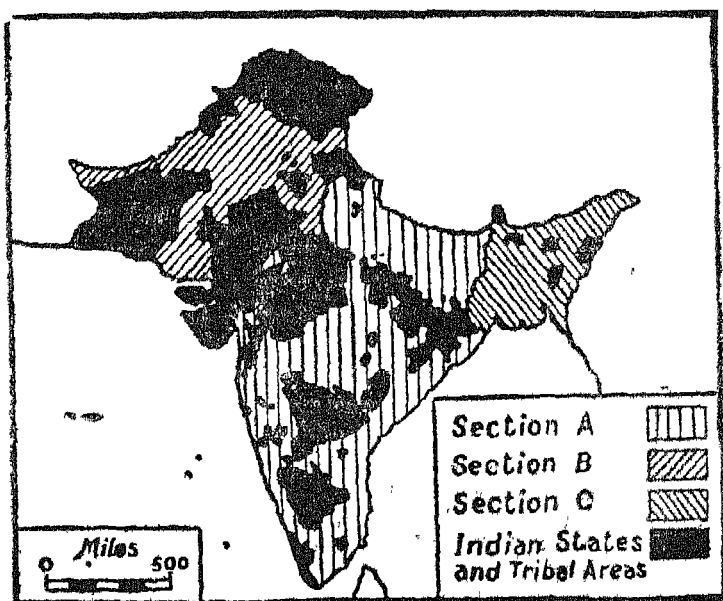
** Sections A, B and C*

The total representation for British India works up to 296 members distributed as follows :—

SECTION A			
PROVINCE	GENERAL	MUSLIM	TOTAL
Madras	45	4	49
Bombay	19	2	21
United Provinces	47	8	55
Bihar	31	5	36
Central Provinces	16	1	17
Orissa	9		9
Total	167	20	187

SECTION B				
PROVINCE	GENERAL	MUSLIM	SIKH	TOTAL
Punjab	8	16	4	28
N. W. F. P.	—	3	—	3
Sind	1	3	—	4
Total	9	22	4	35

SECTION C			
PROVINCE	GENERAL	MUSLIM	TOTAL
Bengal	27	33	60
Assam	7	3	10
Total	34	36	70
Total for British India ...			292
Maximum for Indian States ...			93
Chief Commissioners Provinces ...			3
Baluchistan ...			1
			389



According to this scheme, the Hindus and the Sikhs of the N. W. F. P. do not have a single representative in the Constituent Assembly. The Muslims of the province of Orissa also go unrepresented. But the Mission did not forget to give one representative each to the Chief Commissioner's province of Delhi, Ajmer-Merwara with a population of about 6 lakhs and Coorg with a population of less than 2 lakhs. These areas are added to Section A, while British Baluchistan sends a delegate for inclusion in Section B.

The Preliminary Meeting

In the first instance, the representatives[†] of British India numbering 296 meet in New Delhi and elect the Chairman and perhaps a panel of Vice-chairmen. The Mission do not envisage much work for the Assembly at the preliminary meeting which will however decide the general order of business and elect an Advisory Committee on the rights of citizens, minorities and tribal and excluded areas. At this stage many important questions may be decided though the Mission do not seem to encourage such a procedure. But once the Constituent Assembly is set on its feet and starts functioning, it is its own master. It may elect its "executive" consisting of the leader of the House and some kind of a "cabinet" to draft resolutions and rules of procedure.

Though Indian States will not be directly represented in the Constituent Assembly at this stage, a Negotiating Committee consisting of States representatives will give the benefit of its advice on matters dealt with by the Assembly. *It is also likely that the latter may set up its own committee to negotiate with the States' Committee.

* *Hindustan Times* wrote editorially : "The Cabinet Mission have, no doubt, left the method of representation of the States to be settled by negotiation between the preliminary Constituent Assembly composed of British Indian representatives and the Nego-

After this preliminary meeting, the Assembly divides itself into three sections, A, B, and C. These Sectional Constituent Assemblies will then "proceed to settle the provincial constitution for the provinces included in each section and also decide whether any Group constitution shall be set up for those provinces and if so, with what provincial subjects the Group should deal." According to this statement the provinces are taken as units which cannot be tampered with. The interpretation that the Sectional Constituent Assembly is empowered even to abolish a province as a separate entity or redraw its boundaries seems to be far-fetched. The function of the Sectional Constituent Assembly is "to settle provincial constitutions for the provinces included in each section" and by no stretch of imagination or logic could this mean the right to redraw its boundaries. The legal personality of the provinces has been further emphasised by making them the repository of residuary powers not only in the case of the Union, but the Groups as well. Whatever is left out of the Union and Group jurisdiction shall be vested in the provinces.

tiating Committee set up by the States. This does not mean that persons other than representatives of the people can have a place in that body. The Constituent Assembly is to be essentially a gathering of peoples' representatives and the people of the States form an integral part of the people of India. Even a single person entering the Assembly without popular representative capacity will alter its status and lessen its dignity. With the disappearance of British power, the withdrawal of British troops and the end of paramountcy, sovereignty which now resides in Britain, will be restored not to the rulers of the States, but to the people. If there is any conflict between the ruler and his people in any State, Paramountcy will automatically accrue to the power that rules over the major part of India and is responsible for the safety of the whole country. Immediate responsible government and entry into the Indian Union on terms of equality with British Indian provinces are the inevitable conditions for survival of the States and their ruling dynasties.

The Basic Formula

When the Sectional Constituent Assemblies have finished their job, they will be free to reassemble again to form the Union Constituent Assembly. At this stage, the 93 States' representatives will come in and the work of constitution-making for the whole of India will begin in right earnest. Apart from the work of laying down the terms of the constitution for the country, the Union Constituent Assembly will have to devote its attention to two important subjects of permanent value, namely, the conclusion of a treaty with the United Kingdom and the declaration of Fundamental Rights. The Fundamental Rights will of course, form the bedrock on which the constitution will be based. The Constituent Assembly, being a sovereign body, can discuss and decide on all issues relating to India, provided, of course, it conforms to the basic formula laid down by the Cabinet Mission. Here it may be useful to take note of the basic form of the all-India constitution recommended by the Mission. The main features of this scheme are :

- (1) There should be a Union of India, embracing both British India and the States, which should deal with the following subjects : Foreign Affairs, Defence and Communications ; and should have the powers necessary to raise the finances required for the above subjects.
- (2) The Union should have an Executive and a Legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.

- (3) All subjects other than the Union subjects and all residuary powers should vest in the Provinces.
- (4) The States will retain all subjects and powers other than those ceded to the Union.
- (5) Provinces should be free to form Groups with executives and legislatures and each Group could determine the Provincial subjects to be taken in common.
- (6) The constitution of the Union and of the Groups should contain a provision whereby any province could by a majority vote of its Legislative Assembly, call for a reconsideration of the terms of the constitution after an initial period of 10 years and 10 yearly intervals thereafter.

This basic form cannot be changed unless a majority of the Muslim and non-muslim members jointly and severally approve of a change. The same rule also will apply to questions raising major communal issues. What constitutes a major communal issue has not been defined nor is it easy of definition. Indeed this may lead to many deadlocks and differences. These will be resolved by the Chairman of the Assembly who shall decide which of the resolutions raise major communal issues. If a majority of the representatives of either of the major communities should request the Chairman to consult the Federal Court before giving his decision on a particular resolution, he shall be bound to follow this advice of the Assembly. But according to the wording of this statement, the Chairman is not bound to follow the findings of the Federal Court. Mr. Jinnah sought to get an elucidation from the Mission on this point and he pressed the view that the Chairman should abide by the findings of the Federal Court.

Indian Constituent Assembly

It would appear more natural to have the Union Constituent Assembly finish its job first so that the Sections can take their own time in settling the more local problems of provincial constitution-making. During the Tripartite talks, the Congress President referring to this matter said : "The drafting and settling of the constitution should begin with the Federal Union. This should contain common and uniform provisions for the provinces and other units." The conclusion of an Indo-British Treaty and settling the broad outlines of an all-India constitution are certainly more important and far more urgent than the drafting of constitutional plans for Coorg and Baluchistan. The controversies and disputes arising in the Sections, especially in B and C Sections where parties are evenly balanced, may take many a long month to subside and such rivalries and antagonisms will not be a helpful legacy for the Union Assembly. On the other hand, since the basic form of the all-India Union has already been laid down, the Union Assembly will steer clear of controversial issues and will be able to give a proper lead to the untamed patriotisms of provincial celebrities.

Union Assembly in full Session

The Union Assembly meets at last. It is greeted by constitutions of varying mien and complexion from the A, B, C., Sections. There may be still many old wounds to be stitched, many new sores to be healed, the result of many a past failure—groups and provinces may present a perfect picture of chaos and confusion. But it is none of the Union Assembly's business to worry about. The fact, however, is that Constituent Assemblies are not such innocent, law-abiding automata. They possess all the frailties and failings of an ordinary human being and like a human being sharply react in a high of political excitement. To expect anything more or

loss of the Indian (Union) Constituent Assembly is certainly foolish.

It is a body of 389 delegates—a little too big for drafting a complicated constitutional document. When we visualise that the voice of every delegate represents the voice of a million, the Assembly becomes a babel of myriad tongues. How will this huge collection of men and women get down to brass tacks and draft a constitution which deals with the lives of 400 millions? The answer is simple, though a little disconcerting, that the Constituent Assembly leaves the actual work of drafting to experts inside and outside the house. What it does is to thrash out broad principles on which the constitution will be based, entrust the actual task of drafting to committees and experts and then endorse the final draft of the constitution by discussion and interpellations. The Assembly may consult the Provisional Government on matters of procedure but it generally appoints its own committee to draw up rules of procedure. What shall constitute a quorum? What type of resolutions shall be passed by an ordinary majority? Shall the proceedings be *en camera*? All such questions will be decided by the Assembly itself.

En Camera Proceedings

The question of secrecy of deliberations will be an important issue for the Indian Constituent Assembly to decide. The need for such secrecy is most necessary under the present conditions of Indian politics. Secrecy will ensure a platform for the Indian leaders where they need not pitch their terms too high and where the problems can be thrashed out from every possible point of view thereby yielding room for effective compromise not by sacrificing principles, but by understanding the other man's point of view. It will be the first grand occasion for India's leaders to open without reserve

their minds, secure in the knowledge that they are free from the interested attentions of a third party.

It is the unanimous opinion of historians that secrecy of deliberations of constitution-making bodies ensures the successful solution of many a controversial problem. Referring to the Philadelphia Convention of May 1787 where leaders like George Washington, Benjamin Franklin, Madison and Hamilton conducted the proceedings behind closed doors, a well-known historian writes : "The reason for this secrecy is obvious ; it enabled the members to speak plainly, if they would ; it prevented tentative or vaguely formed proposals from going forth to the press ; it precluded the likelihood of prejudice or opposition based on incomplete evidence and it allowed the Convention to present its conclusions." These important considerations also impelled the South African National Convention to conduct its proceedings in absolute secrecy. It is therefore quite probable that the Indian public may be denied the pleasure of following the deliberations of the Assembly from day to day both from the visitors gallery and through the intimate pen-pictures of special correspondents and news-pedlars. It should be in the public interest that the latter be given an enforced holiday—a term of "earned leave" which they rarely enjoy and always deserve. This does not mean that all news will be blacked out. On the other hand, the Assembly may appoint its own Press Committee which will issue agreed daily communiques on the proceedings and decisions. The Assembly may do its own publicity and may not rely on the colourful reports of the members of the Fourth Estate. But in case the Assembly decides to throw open its deliberations to the press and public, it may do so on the ground that such *purdah* deliberations may give currency to wild rumours and imaginary reports. Even then the proceedings of the various expert committees will be a sealed book to the public.

Procedure

Forms of procedure in a Constituent Assembly conform more or less to those being followed in the parliamentary institutions of the modern world. The difference between a Constituent Assembly and an ordinary legislature is that while the former is charged with the task of arriving at decisions on the permanent constitutional set-up of a country, the latter is invested with the lesser responsibility of guiding the country's affairs within the limits of that constitutional set-up. In other words, the Constituent Assembly is a sovereign, independent body taking orders from none while an ordinary legislature works on a pre-arranged plan and has to abide by rules and regulations imposed by the constitution of the country. In England, the distinction wears thin because the British Parliament does not work under a "written constitution" and it can at any time set about changing its own constitution without having to convert itself into a Constituent Assembly, or moving a formal amendment to the constitution as in the case of the United States of America. Thus though the difference between these two bodies is of a fundamental character, the type of work put through by them is very similar in nature. Hence forms of procedure obtaining in them cannot be very dissimilar.

There is a vague feeling in the public mind that perhaps an ordinary majority will not suffice to pass a resolution that may come up for decision in the Assembly. This is certainly not the case. Except for resolutions which may raise major communal issues or may seek to alter the basic form of constitution laid down by the Mission, all other resolutions will be settled by an ordinary majority vote. This is as it should be. A Constituent Assembly is a democratic body "chosen for the purpose of considering and for either adopting or proposing a new constitution or changes in an existing constitution."

Democratic procedure is dictated by majority opinion and it would be almost impossible for a democratic body to function if simple majorities are reduced to the helpless position of minorities. Resolutions affecting the religious, social and cultural life of a particular community should, of course, be passed only with the consent of a majority of the community concerned present and voting. The Cabinet Mission has laid down this provision clearly in the following words : "In the Union Constituent Assembly resolutions varying the provisions of paragraph 15 (the basic form of constitution) or raising any major communal issue shall require a majority of the representatives *present and voting* of each of the two major communities." Other resolutions which do not come under either of these two heads will be passed by a simple majority. Replying to the question whether it will be open to the Constituent Assembly to endow the Union with all powers of taxation including customs, income-tax and other taxes, Lord Pethick-Lawrence said : "The statement left it open to the Constituent Assembly to interpret the words relating to finance, subject to the condition that any resolution raising a major communal issue should require a majority of the representatives present and voting of each of the two major communities. Subject to that and subject to alterations in the basic formula, a bare majority in the Constituent Assembly should carry a proposal. The question of including currency in the central list could be discussed, if necessary, in the constitution making body."

In the matter of procedure, India can benefit from the experience of foreign countries. An account of some of the important Constituent Assemblies which have blazed the trail for others to follow is given in chapter V. Procedure, however, is a matter of individual adjustment and adaptation to existing conditions. Hence no one can say precisely what

should be the procedure adopted in particular cases. In the case of this as of other matters, the Constituent Assembly itself is the final arbiter. Having thus laid down the rules of procedure, the Assembly settles down to work. In the next chapter we shall discuss the questions that will face the Assembly and the manner in which they may be tackled.

The Congress Working Committee set up an Expert Committee on July 8, for the purpose of preparing material for the Constituent Assembly. The Expert Committee to consist of Pandit Jawaharlal Nehru (Chairman), Mr. Asaf Ali, Mr. K. M. Munshi, Sir N. Gopalaswamy Iyengar, Prof. K. T. Shah, Mr. D. V. Gadgil (of the Gokhale School of Economics), Prof. Humayun Kabir and Mr. K. Santhanam (of the Hindustan Times).

CHAPTER III

PROBLEMS BEFORE THE CONSTITUENT ASSEMBLY

Drafting the constitution of the Indian Union will be the Assembly's problem number one. A Declaration of Fundamental Rights will be its next *Thrashing out a Treaty between this country and the United Kingdom will be its problem number three Under this treaty, the mechanism for the smooth transfer of power from British to Indian hands will be perfected In this, defence, commercial relations, and the question of other British interests will figure prominently. The Constituent Assembly will have to work out the details of this treaty in such a manner that the interests of India as a whole are safeguarded and there are no violent jolts which might endanger the security and tranquillity of this vast country.

Republic or Dominion ?

It is quite possible that the Constituent Assembly may in an attempt to impress world opinion and the public at home pass a resolution declaring India an independent

* Mr K M Panikkar writes in his book "The Basis of Indo-British Treaty" : "The problem of India and the problem of England are the same It is the organisation of a maritime State system—of a Western European bloc for Britain and of an Indian Ocean bloc for India. Conceived in this manner, the Western bloc will be found to be the counterpart of the South-east Asia conception, a defence area which is a self-sufficiency unit under a specific leadership. In respect of the Western bloc, the leadership has to be with Britain, because of its industrial strength, organisation and geographical position. Equally in regard to South-East Asia and the Indian Ocean area generally, that leadership belongs to India."

Republic from the date of the inauguration of the new constitution. Premier Attlee has clearly stated that the decision to stay in or stay out of the British Commonwealth of Nations is entirely the responsibility of Indians and that whatever be the decision, Britain will continue to help India in her onward march. Recently Professor Coupland wrote : "If India wants Britain's co-operation until she can defend her frontiers and maintain her industrial equipment without help from outside, she can have it, whether she decides to remain within the British Commonwealth or not. Britain would doubtless be willing to make with a wholly separate India the same sort of arrangements she has made with Egypt and Iraq. In India's case, as in theirs, security is a matter of mutual interest. So, of course, is economic co-operation." The question of India's future political Status can also be decided in the process of discussing the details of the treaty to be signed between the two countries.

Should the Treaty or the framing of the constitution come first ? In a sense, both these tasks are complementary, and may have to be carried on simultaneously. How can India's future defence arrangements and set-up be discussed without knowing beforehand the nature and extent of British co-operation available during the first few years of transition ? How can India's economy be overhauled and her finance kept straight without coming to an understanding over the British commitments ? In all probability drafting of the constitution and settling the terms of the treaty will go hand in hand and their successful consummation will depend on each other. Two omnibus committees may be appointed to go into these questions separately, though simultaneously. For purposes of clarity we shall take into consideration first the question of India's future constitution and what problems are likely to arise, and how they may be fac-

ed by the Union Constituent Assembly. (Sectional Constituent Assemblies will be considered separately).

Union Constitution

In laying the foundations of a new constitutional set-up, the first question to be decided will be the type we should like to follow in India—whether it should be the Swiss, American, or the British type of government. Should we have the Composite Cabinet of the Swiss type or the Cabinet system of Great Britain? There are many great attractions for India in the latter system. For one thing we are more conversant with its working. It is also simpler than the Swiss system. And lastly we are already running a cabinet form of government in our provinces. But a composite or all-party variant of the cabinet system may be found best suited to the peculiar conditions in India. Under such a system all the members of the legislature will elect the cabinet adopting the method of proportional representation.

Joint Versus Separate Electorate

A question which rouses fierce political and communal passions is that of Joint versus Separate Electorate. Since the subject raises major communal issues, it will require a majority of both the major communities to bring about a change from the separate to joint electorate. It is highly improbable that the Muslims will agree to the system of joint electorate even with a reservation of seats. It is interesting to note that the Sapru Committee offered parity to the Muslims as an inducement for the adoption of joint electorates. Its recommendation reads: "In case the Muslim community on their part agree to the substitution throughout of joint electorates with reservation of seats for separate communal electorates and in that case only this Committee would recommend that in the interests of national unity, the Hindu community should agree that in the strength of the Central

Assembly excluding the seats allotted to special interests such as commerce and industry, landholders, labour, etc., Muslim representation from British India shall be on a par with the representation given to the Hindus (other than Scheduled Castes) in spite of the great disparity in their respective population strengths." It is indeed very doubtful if a majority of the Muslim delegates to the Constituent Assembly will take advantage of an offer like this.

Should there be adult suffrage in the elections to the Union Legislature? There seems to be a practical unanimity of opinion that the suffrage should be as broad-based as possible. The average Indian is intelligent enough to be able to exercise his political judgment in using his vote. The question does not raise communal issues and therefore it may be expected that the Constituent Assembly will decide in favour of introducing adult suffrage in the elections under the new constitution.

Weightage and Special Interests

Parity—between Caste Hindus and Muslims—may not exist in the new constitutional structure. But there will be some form of weightage given to minorities in general. The form and extent of this weightage will be decided by the Advisory Committee on the Minority Rights which will submit its report on the matter to the Constituent Assembly.

It has been suggested that ten per cent of the total strength of the Union Legislature should be reserved for the representation of special interests which will include Landholders, Commerce and Industry, Labour and Women. The other seats will go to the rest of the communities such as Hindus, Muslims, Scheduled Castes, Sikhs, Indian Christians and Anglo-Indians.

The need for a Second Chamber at the Centre has been emphasised by the existence of different provincial and State

units. As the Lower Chamber or the Union Assembly will reflect the country on a population basis having on the average one member for every million of the population, the Second Chamber may be formed, as in the Case of the American Senate, Offering equal representation to the units on an equal basis. Bengal, Orissa as well as Hyderabad and Cooch-Bihar all have the same amount of representation in the Second Chamber and despite disparity in population, area, economic and political status, they will meet as equals in this house.

Distribution of powers: Union versus provinces and groups

*The distribution of powers between the Union and the provinces has been a matter of heated controversy between those who stand for a strong and efficient Centre and a United India and others who demand a weak Centre and the partition of the country. The Mission has, of course, found a *via media* and allocated in its basic formula Defence, Foreign Affairs and Communications to the Union Centre and all the other residuary subjects of the provinces and groups. The need for including Currency in the Central list has been vigorously canvassed. The right of the Centre

* This is a matter on which the Constituent Assembly will have to take its final decision. Referring to this controversy Sir Stafford Cripps said : "They (the Indian parties) are, of course, at liberty to advance their views as to what should or should not be the basis of the future constitution—that is the purpose of the Constituent Assembly, to hammer out an agreement from diverse opinions and plans. Likewise they can put forward their views as to how the Constituent Assembly should conduct its business, and having agreed to the statement of May 16, and the Constituent Assembly being elected in accordance with that statement, they cannot of course go outside the terms of what has been agreed to as that would not be fair to the other parties who have come in. It is on that basis of that agreed procedure that the British Government have said they will accept the decision of the Constituent Assembly."

to have the power of levying taxes in its own right has been conceded. Customs as a revenue source for the Union has been considered to be equally important. It has been argued that unless the Centre becomes the ultimate arbiter in so vital a matter as law and order, which affects the very existence of the State, it is useless to invest it with the responsibility of external defence. Defence means much more than the simple dictionary meaning we are inclined to give it. For, defence is based on economic activities such as industries, labour, production control and planning which are, under the Mission's proposals, allotted to the Groups and Provinces within Sections.

It has been pointed out and asked : "While Foreign Affairs are a Union subject, all non-political, international affairs will fall outside the scope of the Centre. Shall India, as one unit, be represented at the international commercial, monetary, agricultural and other economic institutions which have been set up ?" Public debt, currency, coinage, sterling balance, emigration and immigration, census, import and export, customs, tariffs, insurance, banking, excise duty, income and corporation taxes, factories, trade unions, labour disputes, electricity and irrigation—these are the subjects which have been given over to the provinces and Groups within Sections. Can these be efficiently fostered by the units without a great degree of intimate cohesion, uniformity of policy and procedure ? In the absence of a common monetary administration and fiscal policy what is to become of the Reserve Bank ? Should no one think in future in terms of all-India plans for education, health, industrial and agricultural development, exploitation of minerals, hydro-electric and irrigation schemes ? *These

* Sir Stafford Cripps in Parliament said : "We have negotiated an agreement between the main Indian parties and acceptable to Indian States which provide a machinery for working out a new consti-

are only a few of the typical questions that will have to be answered by the Constituent Assembly.

India has today developed a few sturdy research institutions like the Council of Scientific and Industrial Research, the Imperial Council of Agricultural Research, the Surveys of India, Meteorological Observatories, the Central Power Board and the Locust Control organisations. These cannot be scrapped, nor divided. The fruits of their research can only be shared in common. What will happen to them under the basic formula of the Mission? The Constituent Assembly alone can furnish the answer.

Possible New Departments

The list of subjects allotted to the Union Government under the Mission's proposals is open to revision by a special vote of the Constituent Assembly, i.e., with the help of a majority vote of both the major communities. The Assembly might seriously consider the need for a central organisation for the purpose of co-ordinating the loose-ends of provincial and group affairs in the fields of economic, social and labour legislation. Such an organisation might as well become the Central Department of Co-ordination.

tution. It is not our task to make that machinery work. We must now stand aside, always ready and anxious to help, if we are wanted but determined not to interfere. No one would be so foolish as to imagine that the course of constitution-making would be a smooth one. The principal parties will not give up their deeply held convictions at the moment. But we have succeeded in doing what, it has often been suggested, was necessary. We have negotiated means of bringing the representatives of India, Indian people together—without our presence—to settle for themselves their own exceedingly difficult problems. We believe that given the accommodation which both sides have shown in agreeing to the plan, it will not be impossible to work out a solution of the many problems that confront the Constituent Assembly."

The Advisory Committee on Fundamental and Minority Rights is not only to draw up a list of such rights but may suggest the setting up of a separate department at the centre for ensuring the proper observance of these rights in the provinces, groups and the Union. In fact, the Mission's original suggestion included the Fundamental Rights in the Central list.

Serious concern has also been felt over the exclusion of Planning and Development from the Central list. It is argued that defence arrangements cannot work smoothly without a unified plan of production and distribution. Effective mobilisation of internal resources should be possible if the defence of a country is to be kept at a high level. Hope has been expressed that a special provision will be made in the constitution itself by which in the event of a grave national emergency the views of the Union would prevail over those of the Provinces and Groups. Writing on the economic implications of the Mission's basic formula, the *Eastern Economist* wrote: "A constitutional scheme may satisfy the criterion of political advocacy because it steers fairly evenly between the divergent claims of the rival parties. But the state itself will not survive if in the name of political reconciliation, it is deprived of the sinews of war and peace which are fundamentally economic in character and which can, by no constitutional or political legerdemain, be divorced and segregated, as is sought to be done, from defence." The question of the economic consequences of a restricted Centre in the fields of defence and production threatens to become one of the many questions over which heated controversy will rage for many a long day. Questions like Contribution versus Taxation and Indirect versus Direct Taxation are bound to take on a special political significance. A special committee of financial and economic experts elected from

the delegates might go into the whole question and its report will offer valuable guidance to the Assembly.

A Warning

If India is to be split up economically, says a financial expert, the achievement that has been built up with regard to India's credit would be rudely and crudely dissipated. Unification of credit is indispensable for the maintenance of the country's ability to borrow on as large a scale as would be necessary for the adequate planning of the country. Mr Fenner Brockway gives the following warning to the Constituent Assembly. "I hope very much that India as it proceeds to its constitution-making will realise that we are living in a world where social and economic planning must be carried out over the largest possible areas and in the most comprehensive way. It should surely be possible to meet all the rightful claims of the Indian communities to self-expression without sacrificing the all important need for India to have a Central Government not only for its Foreign Affairs and Defence but for its whole economic planning in addition to transport. In this field India will have its most important immediate development and it will be bound hand and foot if it approaches the task in the setting of a patch work in which every patch plans for itself without the co-ordination which the whole nation requires. I hope that the Indian Constituent Assembly when it meets, will at least allow for a flexibility in India's constitution which will permit it to adjust itself to India's developing needs."

Declaration of Fundamental Rights

There has been a universal demand for the incorporation of the Fundamental Rights of Man in the Indian Constitution. (See appendix page 64 for the Congress resolution on the subject). The Congress and the Muslim League, the employer

and the employee, the zamindar and the peasant, have all with one voice asked for the drawing up of a list of rights on which the constitution of a free India would be built up. These rights are envisaged as complementary to the duties of citizenship and are opposed to the rights of the State. Whatever be the form of government or constitution a State may have, the sanctity of Fundamental Rights occupies a high place in it and it has been suggested that a special Court of Justice should be made the guardian of all such rights. These rights are regarded as not only fundamental in the political sense but they are held to be "sacred, natural, and inalienable."

Being a product of the age of French Revolution, the list of the Fundamental Rights is headed by the right of men to choose their rulers. From this it follows that if men can choose their rulers, they can also criticise them freely for their actions. The French Declaration said : "The unrestrained communication of thoughts and opinions being one of the most precious rights of man, every citizen may speak, write and publish freely, provided he is responsible for the abuse of this liberty in cases determined by the law." Apart from these political rights, the civil rights of man have been classified as the right to personal freedom, freedom of religious belief and worship, the right to the possession of property and the right to equality. In Soviet Russia, the fundamental rights have been so designed as to exclude non-workers from deriving any benefit from them.

The important role which these Fundamental Rights play in toning up the constitution has been described in classic language by Dr. Oppenheimer. According to him, their function is "to supply standards and prescribe limits for the legislature, the executive and the administration of justice, both in the federation and the States ... They were intended to sink deeply into the soul of the nation".

The Union Constituent Assembly will be helped by the report of the Advisory Committee on the Minorities and Fundamental Rights which will include a list of such rights to be incorporated in the constitution. Every minority in India has asked for its special rights to be protected within the framework of the Fundamental Rights. The Congress resolution on the subject may form the nucleus round which further rights can be woven according to the varying needs of different minorities in the country. Mr. Jinnah's "Fourteen Points" included the following demand : "Whereas, having regard to the political conditions obtaining in India, it is essential that the Indian constitution should embody adequate safeguards for protection and promotion of Muslim education, languages, religion, personal law and Muslim charitable institutions and for their due share in grants-in-aid." The Scheduled Castes require special Fundamental Rights to improve their social and economic position. The Sikhs also demand special rights concerning the wearing of "Kirpans" and the use of the "jatka" meat. The Indian Christians and the Anglo-Indians have put forward their own demands claiming the protection of special rights. As all the minorities will be properly represented in the Constituent Assembly Committee on Fundamental Rights, their representatives, it is hoped, will be able to come to an agreed decision on the list of Fundamental Rights, affecting them individually and collectively. The Advisory Committee envisaged under the Mission's proposals will advise on the incorporation of these rights in the Union, Groups and provincial constitutions.

The Sapru Committee has recommended the incorporation of a comprehensive declaration of Fundamental Rights in the future constitution of India. The rights include (a) the liberties of the individual ; (b) the freedom of press and association ; (c) equality of rights of citizenship of all nation-

als irrespective of birth, religion, colour, caste or creed (d) full religious toleration, including non-interference in religious beliefs, practices and institutions (e) protection to language and culture of all communities.

Indian States

The Indian States' representatives will make their appearance in the Constituent Assembly only when the latter meets in full session after the Sectional Constituent Assemblies have finished their work. *At the preliminary meeting of the Constituent Assembly when the Chairman will be elected and the general procedure decided, the States will be represented only by a Negotiating Committee. The function of this committee is to confer, in co-operation with a similar committee set up by the Union Constituent Assembly, on a number of important questions arising between the Indian States as a whole and British India. The Negotiating Committee will begin functioning simultaneously with the coming into being of the Constituent Assembly. Its first big job will be to work out a method of States' representation in the constitution-

* Sir C. P. Ramaswami Iyer has summed up the States' point of view in the following words, spoken on the floor of the Travancore Legislative Assembly. "Indian States are only too willing and too anxious to work in complete co-operation with the various political parties in British India in the task of achieving independence for India. States have been given the same freedom as the other parties to join or not to join the future Union. The terms on which they will join will be subject to negotiations between the representatives of the British Indian parties and the Negotiating Committee selected by the States. Certain Indian leaders have made comprehensive statements declining to concede independence of any kind to Indian States. They forget that under the present constitution of India even the provinces have got residuary sovereignty and delegate the Centre only certain specific powers in the interests of the common good."

making body. The Congress point of view on this subject is well-known. The Cabinet Mission was clearly told that the nominees of autocratic rulers cannot find a place in the Assembly mostly elected on democratic suffrage. The representatives from States should be, as far as possible, the representatives of the States people. Some statesmen of the Indian States are credited with desiring to keep only fifty per cent of representation to be nominated by rulers and the other fifty to be elected by the States' legislative councils. But in a number of States the legislatures are either non-existent or they are only a pale reflection of the rulers themselves. Hence the States were asked to form this Negotiating Committee which will settle not only the method of selection of representatives and the proportion of officials to non-officials, but also problems of long-term interest. The question of mandate to their representatives and the procedure of ratification by the States individually of the decisions arrived at by the Union Constituent Assembly will have to be settled by negotiation. There are numerous 'Statelets' which are not entitled to send even one full representative and their grouping is a matter of immediate urgency. All these matters will engage the attention of the Negotiating Committee.

Apart from these questions of short-term interest, the Committee will also have to tackle a few matters of a more permanent nature. It will have to concern itself with the task of finalising the terms on which individual States will come in to the Union Centre. It must decide whether the terms should vary from State to State or whether there should be uniformity and whether the small, uneconomic statelets should be abolished and their rulers pensioned off. Perhaps more important than all these will be the problem of working out the best method for associating the people in the

administration of the States. These problems which may generally be classified as large administrative matters have been left to the Negotiating Committee to thrash out.

What about questions of high policy, such as paramountcy, treaty rights and dynastic rights? Surely these are important matters on which the views of the Constituent Assembly will be taken. The agreed decisions may be incorporated in the Treaty which will be entered into between England and India. While satisfaction is expressed in all quarters at the prospective disappearance of Paramountcy and liquidation of what has come to be known as the "Political Department", it has been asked: "What will take its place? Will the autocratic ruler become more than at present a law unto himself?" While the Congress has agreed to the continuance of the Ruler as a constitutional head, it has left no one in doubt as to where ultimate sovereignty will reside. Nor is the Constituent Assembly likely to agree with the Cabinet Mission's question begging assertion that the "British Government could not and will not in any circumstance transfer paramountcy to an Indian Government." This view of the British Mission has been vigorously challenged by legal and constitutional experts, one of whom recently wrote: "The Cabinet Delegation has made a statement that withdrawal of paramountcy will not result in a transfer of it to the Indian Union. This view is questionable in the light of the claim made by the British Crown on several occasions that in part at least the rights of paramountcy are traceable to their being successors of the Moghul Emperor. Besides, if the Indian Union is to be in any sense the successor to the British sovereignty in India as the result of the recognition of India's right to independence, there is no reason why on the principle of State succession—a principle which has been recognised by the Permanent Court of Inter-

national Justice in several cases—that the Union authority should not exercise the rights of paramountcy in regard to non-acceding States ” (Sir Alladi Krishnaswami Iyer).

The States will be governed by many clauses in the Union Constitution such as the question of the jurisdiction of the Supreme and Federal Court, the specific contributions to be made to the Union Government and the representation of States in the Union executive, legislature and other bodies dealing with Defence, Foreign Affairs and Communications. Should the State armies form part of the larger Indian army or should they continue in their separate identity ? Could the States join any of the Sections A, B, and C for certain common purposes ? All such questions will be decided by the Constituent Assembly itself. (See appendix No. 26) for an illuminating article by Sir N. Gopalswami Iyenger on the position of Indian States under the British Cabinet proposals).

Indo-British Treaty

A reference was made in Chapter I to Gandhiji's forecast of a peaceful transfer of power, recognised by a Statute of the British Parliament. He said that the ratification of the declared will of the Indian people will be in the form of a Treaty between England and India. He dreamt of such a transfer of power, the details of which to be worked out in an Indo-British Treaty, as early as 1922. And it was twenty long years after that the first official mention of such a treaty was made. The Cripps offer of 1942 referred to a treaty to be made between the British Government and the Constitution-Making Body to be set up in India to deal with "all matters arising out of the complete transfer of responsibility from British to Indian hands." Said Sir Stafford Cripps : "The moment the new constitution comes into operation, the

change-over takes place." The details of the change-over are of course, to form the substance of the Treaty.

The need for such a treaty arises specifically as a result of political, economic and defence considerations. Whether India stays within the British Commonwealth or prefers to go out, whether she chooses to remain a Dominion or turn into a Republic, Indian people would like to get on with the British in future as perfect equals. What is more, they would prefer to have a spectacular device which will advertise this fact to the world and perhaps nothing can give them better satisfaction than the conclusion of a Treaty in which they would figure as free men on a footing of perfect equality with their erstwhile masters.

*On their part, the British feel—at least, they want us to believe that they feel—that they have certain political and moral obligations to large groups of men classified as minorities and to a lesser number of individuals known as Princes.

* In the course of the Parliamentary debates, Mr. Churchill said : "If all the minorities are added together they constitute among them much more than half the inhabitants of India. I am glad to say that so far as I understand the position, the British Government have not renounced their principle of their discharge of their responsibility towards the minorities in India which aggregate at least 225,000,000 out of 400,000,000. The attitude of the Mission and the Government on this point was expressed in a single sentence of the plan they put before the representatives of India with whom they deal. This sentence declared that when the Constituent Assembly was formed, the British Government would recommend in Parliament such action as might be necessary for cession of the sovereignty of the Indian peoples, subject only to two provisos which were believed not to be controversial—namely, adequate protection for minorities and willingness to conclude a treaty on matters arising out of transfer of power. This seems to be a somewhat light and almost a casual manner of treating responsibility extending to an appreciable part of the human race and touching those fundamental rights of life, liberty and pursuit of happiness which we have

Fortunately for India and for the British, the Princes have practically decided to sink or swim with the Indian Union. And as for the minorities, with the single exception of an important element which does not wish to be classified as a minority, the other minorities have realised that the protection of their rights depend more on the cordiality of their relationship with other large groups inhabiting the vast country than on the good offices of an interested third party. It would indeed be a highly anomalous position for the Indian minorities to be placed under the "moral" protection of a third party who will have no juridical status to take up the cudgels in defence of minority rights in an independent country.

In the case of the Princes, however, the need for revising their treaties with the British Crown will be urgent and the new terms negotiated by the three parties concerned, namely the British Government, British India and the Princes will form part of the bigger Indo-British Treaty. As the States will participate in the work of the Union Constituent Assembly, they will become automatically members of the Indian Union when the new constitution comes into force. Under the new political set-up, the States will have new duties and responsibilities and may in many cases become

regarded as the birthright of every human being. All arrangements which are being made by the Constituent Assembly and any treaties which may subsequently be brought into existence between the Crown and Parliament of Great Britain and a new sovereign, independent Government of India must be subject to the fulfilment of our honourable discharge of our obligations. I hope that we all agree with that. A Bill or perhaps several Bills will have to be presented to Parliament and they will have to pass through all their stages and that is the time when the final decision will have to be taken. Nothing must be agreed to by us at the moment of the transference of sovereignty which will be any derogation of our solemn undertakings."

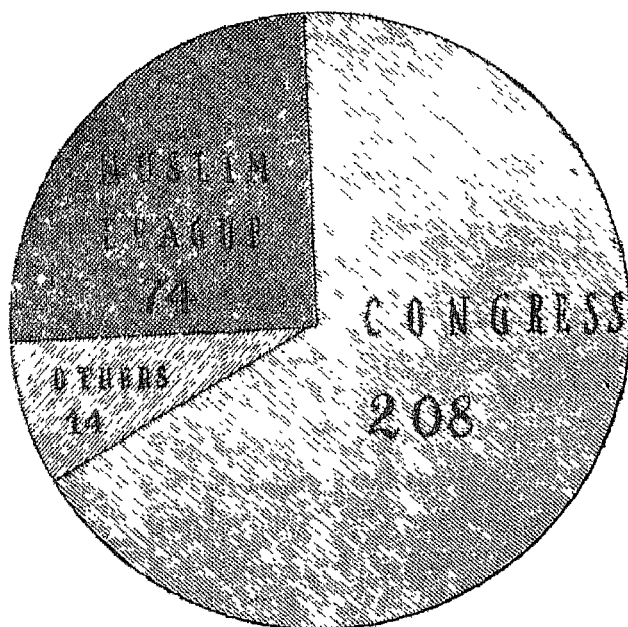


DIAGRAM 1

Preliminary Session of Union Constituent Assembly
(Others include Sikhs)

exponents of a new political philosophy with which they had so far only a nodding acquaintance. The Indo-British Treaty will work as a political safety-valve not only for peaceful transfer of power from British to Indian hands but for a gradual transformation of the Princely India into a full-fledged democratic unit.

The economic clauses of the Indo-British Treaty will have perhaps the most far-reaching repercussions on the future of this country. Even in 1942 Cripps had declared

bluntly * "We are not going to make any condition in the treaty as regards guaranteeing the vested rights of British interests in India ; " But all reasonable safeguards will be provided for the safety of British interests so long as these do not clash with Indian interests. British co-operation in the long-term capital development of India will be welcomed and provided for in the treaty. As Professor Coupland remarks in his book, "The Future of India," traders everywhere depend on the goodwill of the people with whom they trade. And then he adds significantly : "In India it must be the goodwill not only of business circles but of political circles too." The method of repayment of the huge sterling balances may figure as one of the important financial clauses in the treaty.

Defence Set-up

Through a non-violent, constitutional struggle, India has been able to wrest power from the hands of the British. But freedom in the modern world can be maintained only with the help of a well-organised army. The Congress ideology based on non-violence is understandable only against the background of a struggle for political freedom. Once that freedom is gained and power is transferred to Indian hands, the latter

* Says K. M. Panikkar in his book "The Basis of an Indo-British Treaty" : "Frankly, the liquidation of British vested interests in India should be an article of the treaty. These have been calculated to be no more than 600 million pounds and their acquisition by India will, without loss to Britain, kill at one stroke the suspicion of British exploitation. Indian participation in the machinery of overseas trade, shipping, exchange, banking and insurance, will give to India the necessary confidence in British intentions. Nor would these steps mean any financial loss or fall in prestige to England, for a better and more equal association can be more profitable in every way. In fact, a prosperous, free and contented India has much to offer to the world in the way of industrial prosperity."

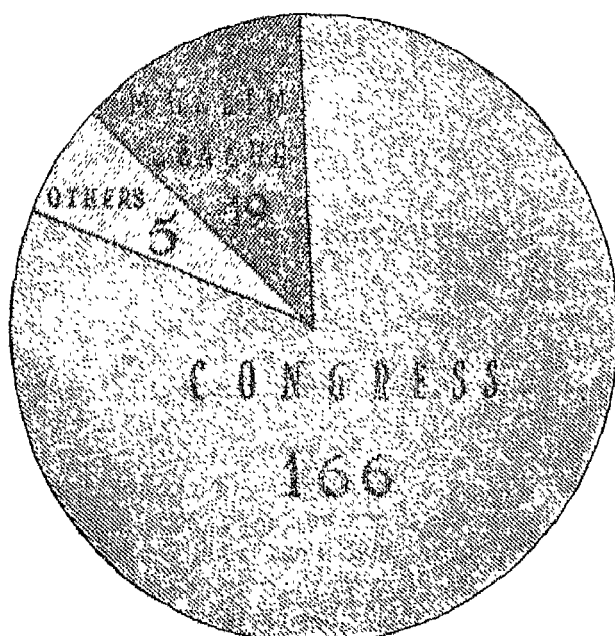


DIAGRAM 2

Section 'A' Constituent Assembly

must be able to exercise it in all the fields of national activity. Unfortunately in the province of defence, the British Government have so long confined the Indian personnel to the lowest grades of service that a sudden, over-all change-over to Indian personnel has to be spread over a period of years. In the transitional period, Britain will help the Indian Government to expedite the conversion of the Indian Army into a cent per cent Indian National Army. The defence clauses of the treaty will mainly relate to the stages by which this process will be completed. "No Imperial troops will be retained in this country" declared Cripps at a Press

Conference, "except at the request of or by agreement with the new Indian Union." The continuance of foreign troops in an independent country will be objected to not only on large grounds of policy and prestige but also because such a state of affairs will lead to embarrassing situations in the field of foreign relations. Said Mr. Amery some time ago. "So long as the defence of India requires the permanent presence—as distinguished from help in a great emergency—of British forces, it is obvious that the Government which provides these forces is entitled to retain a measure of control over their employment in peace as well as over the external policy which may call for their employment in war." Certainly Indians do not desire the *permanent* presence of British troops in this country. On the other hand, they would pay any price for a speedy return of non-Indian service personnel to their homelands. But so long as British troops stay in India, complications as foreseen by Mr. Amery are bound to arise. *It is for the country's representatives in the Constituent Assembly to work out a treaty in which such complications will be kept to a minimum.

* The future of British officers in the Indian Army and the Navy is the subject of an official communique which says : "When the new constitution comes into force, those British regular officers of the Royal Indian Navy or the Indian Army of 20 years' service or under at that date who do not wish to continue to serve as such, or whom the new Indian Government do not wish to retain, will be entitled to apply for transfer to the Royal Navy and the British Army respectively. Subject to their individual suitability, they will be absorbed by those services to the maximum extent possible. Those who cannot be absorbed or do not wish to transfer will be entitled to compensatory terms on retirement, as will those officers of over 20 years' services who, on the introduction of the new constitution, do not wish to continue to serve in the Royal Indian Navy or the Indian Army, or whom the new Government do not wish to

It is well to remember in this connection that peace is indivisible and that Britain with her world-wide interest—in the Far East, South-East Asia, Australia and the Middle East—will continue to be concerned over the defence of this vast sub-continent and the Indian Ocean area which is one of the most strategic centres of the world. Precedents have been quoted to show that Britain had received special facilities in Egypt, Eire and South Africa for purposes of maintaining certain defence measures and a free India may be asked to offer similar treaty rights for similar reasons. The experience of Egypt should serve us as a pointer. The objective of India should be not to get involved in schemes of Imperial strategy but to place all her resources at the disposal of the United Nations Organisation which, one expects, would work out an over-all scheme of world defence. The basis of a free India's defence policy and programme will form the core of the defence clauses of the Indo-British Treaty.

Sectional Constituent Assemblies

Let us now have a look at the Sectional Constituent Assemblies. A reference has already been made earlier in Chapter II to the fantastic theory that a Sectional Constituent Assembly might begin work by redrawing the boundaries of its provinces and or even abolishing some of them according to its political mood then prevailing. Even should this be attempted, let no one run away with the impression that such a task would stand even the slightest chance of fulfilment. The worst or possibly the best it could do would be to make arrangements for the appointment of a Boundary Commission under the new constitution. It certainly "will not undertake" so lengthy, so intricate and so controversial a task itself." The Sapru Committee Report recommended a similar remedy for the rectification of provincial boundaries.

Writing under the heading "Leading Principles of New Constitution," the Report lays down the following procedure : " While it is not desirable that the new Constitution should be delayed by the realignment of provincial boundaries on linguistic or cultural considerations, the Constitution Act shall indicate the machinery and prescribe the procedure for such realignment of old provinces and for the creation of new provinces after it has come into force and on such realignment or creation of provinces, all consequential amendments may be made in the constitution."

It is true that there is a demand from the rank and file for a linguistic redistribution of provinces. The Congress is administratively divided into more than twenty such territories. With the prospect of coming freedom, this demand is bound to gain strength and will be met to a very large extent. But it is important to realise the limits and dangers of such centrifugal tendencies. According to Professor Beni Prasad, it can be followed up only at the risk of atomising the country. "It weakens the will to reciprocal adjustments among groups who do not differ radically from one another and who can easily learn to live in amity."

Whether there should be a Group legislature and executive will be the first question to which an answer will be sought from the Sectional Constituent Assembly itself. If the decision is in favour of forming a Group legislature and executive for looking after certain subjects common to the provinces of the Group, the constitution of the latter will then be settled. It is almost impossible to visualise the type of constitution each of the three Groups will ultimately hammer out for itself. But it is safe to assume that Section A constitution will be more easily licked into shape than that of B and C in view of the even strength of the major parties in the latter, where they are finely balanced more or less on a parity basis. The framing of the Group constitution may

present novel problems but they will be less intractable than those that will arise in the fashioning of the provincial constitutions.

Composite Cabinets

In the provinces where parties are evenly balanced, a composite form of government will be assured of greater success than a Cabinet form. In provinces where one party commands an overwhelming majority, it will be equally useful to have the "composite" form to get the minority's co-operation in the task of administration. The Swiss type (composite cabinet) has been recommended very strongly as offering a sovereign remedy for the minority problems. In a book entitled "The Problem of Minorities and Constitutional Democracy as its solution," Dr. G. S. Mahajani brings out the good points of the composite cabinet in the following words : "Parliamentary democracy is on a par with the law of succession under which only the eldest son inherits the ancestral property. Constitutional democracy is analogous to some extent to the law of succession in a joint family ... Parliamentary democracy stops short with securing to all sections of the people their due share in the parliamentary arm only. Constitutional democracy ensures their getting a due share both in the executive and in the parliamentary arms i. e., throughout the entire constitution. It is an improvement on the parliamentary system first because it adapts democracy to the needs of a nation of non-homogeneous composition and secondly because it does not require the special conditions under which alone the parliamentary type can function." It has also been claimed that under the composite type of cabinet, "majorities have remained majorities but minorities have not been subjected to the rigours of pure majority rule." The Sectional Constituent As-

semblies are bound to pay considerable attention to the possible adoption of this system in the provincial and Group executives.

Should all the provinces in a Group have the same type of constitution? While Madras may prefer a Second Chamber for local reasons, Orissa may not be in a position to afford that luxury. Bengal may feel the need for a Upper House while Assam will be content with one. Joint electorates may look advantageous to Muslims in Bengal and separate electorates may offer a fair chance to every one in Madras. Constitutional devices will have to be adjusted to the differing needs of provinces in various stages of political, economic and educational development.

Grouping Confusion

There has been a terrific confusion of thought as to the inherent status of the provinces. On the one hand they have been given "all subjects other than the Union subjects and all residuary powers" and have been given the "freedom" to form Groups. But the freedom to stand out of any Group and carry on directly with the Union is denied to them. We can well imagine the Group spider saying to the Provincial fly: "Will you just walk into my parlour? Should you feel worried about your future after you have stepped inside, you can always decide to walk out. Who can deny you that freedom? You are the repository of all residuary powers. How beautiful and strong you look!" The provinces are indeed beautiful and strong but by a curious twist of fortune they lie enmeshed in the spider's web.

Explaining the arbitrary grouping of provinces, Sir Stafford Cripps tried to justify the initial element of compulsion used against the provinces in the following words: "There were two ways of dealing with the matter. Either let the the present provincial Governments opt themselves into

Groups or after the constitution is produced, let the new Governments, after the whole constitution making is complete, opt themselves out if they wish. We have chosen the second alternative for two reasons. First because it follows the suggestion put forward as regards the provinces and a single federation. They suggested that all the provinces should come in at the beginning and could opt out if they did not like the constitution when they had seen it. We think that this principle should apply to Groups. Second, the present legislatures are not truly representative of the whole population because of the effect of the Communal Award with its weightages...So we discard present legislatures as decisive for the option and say let it be exercised when the first new elections have taken place, when no doubt there will be a much fuller franchise and when, if necessary, the precise issue can be raised at the elections." This argument strikes one as very clever but not so convincing or sincere. Since the Congress stands for the unity and integrity of India, it did not insist on the right of the provinces to stand out of the Union as it will then constitute a threat to the Union's sovereignty. Now the British Delegation says to the Congress : "You agreed once that the provinces should not have the initial right to stand out of the Union. We now ask you to approve of the same principle in respect of Groups." This approval should have been possible if the Congress had favoured the idea of grouping. While it hates the grouping system as a whole, it abhors the very idea of a province being compelled to commit political *hara kiri* by joining a Group which it does not like. The Congress position was made quite clear to the Delegation in the course of a letter from the Congress President to the Secretary of State during the Tripartite Talks. It said "Your reference to two Groups of provinces, the one of the predominantly Hindu provinces and the other of the predominantly Muslim provinces, is

not clear. The only predominantly Muslim provinces are the North-West Frontier Province, Sind and Baluchistan. Bengal and Punjab have a bare Muslim majority. We consider it wrong to form groups of provinces under the Federal Union, and more so on religious or communal basis. It also appears that you leave no choice to a Province in the matter of joining a Group. It is by no means certain that a Province as constituted would like to join any particular group. In any event it would be wholly wrong to compel a province to function against its own wish. While we agree to the provinces having full powers in regard to all remaining subjects as well as the residuary powers we have also stated that it should be open to any province to exercise its option to have more common subjects with the Federal Union. Any Sub-Federation within the Federal Union would weaken the Federal Centre and would be otherwise wrong. We do not, therefore, favour any such development."

But the British Delegation had to appease the Muslim League by offering it the essence of Pakistan.

CHAPTER IV

THE CONSTITUENT ASSEMBLY MEETS

The Constituent Assembly has met. Even if the heavens were to fall and the earth to split, it would meet ; so had said Sardar Patel. Indeed the heavens did not fall but Mr. Jinnah had won, nor did the earth split, but the Constituent Assembly itself had become a 'translated' thing, before it actually met.

Still the Assembly has met and has embarked on its historical task with a will to succeed.

The Constituent Assembly of India has no parallel in history. It is a body created by the will of a foreign power, professedly for the transfer of power to the people of this country. Hence the precise intentions of that power, the bonafides of its ultimate aims, the malifides of its immediate manoeuvrings, the heritage of its past alignments and the limitations of its appreciation of India's national destiny are all writ large on the peculiar conception of that body which was designed to provide, at the same time, alibi for Britain's repudiation of its responsibility for the past, incitement for a Pakistan hunt, whose unreality was no argument against a deadly demand for it and a glimpse of national freedom which found instantaneous appreciation among those whose only mission in life had been an unrelenting crusade for freedom. It is these mixed motives which had led to its planning, which have beset the Constituent Assembly with all the initial difficulties it is encountering.

The difficulties are real. It is true that Mr. Jinnah may lift the boycott but he may do so only for the purpose of carrying on the communal war through other means. Nor has the communal situation in the country relaxed ; the very fact that Gandhiji had to remain far away from the political centre on his healing mission in East Bengal signifies that the tense atmosphere of 'direct action' has not yet cleared completely. No Central body can cogitate revolutionary changes in the political and constitutional structure of the country under such conditions, for a communal war is least propitious to the success of any such revolutionary change, being in its very nature a kind of two-sided counter-revolution.

Apart from the difficulties which may be expected from the Muslim League and its less prominent satellite organisation, fresh difficulties may arise creating divisions even among those who have so far shown goodwill in working the Constituent Assembly. That body, as it is today, stands debunked more than ever, and debunked by those who created it and paraded it but a few months ago as providing a passage to our political Paradise. By giving a declaration on grouping, however right or wrong it might be, the British Government have impugned the autonomy of that body and reduced it to a kind of *ad hoc* committee appointed to make recommendations under a set of directives, which it cannot afford to ignore. The course of controversy on the grouping clauses of the long-term plan has been a tortuous one. Probably Mr. Jinnah was right in holding that these clauses were intended to have the effect of violating provincial autonomy for bracketing a Pakistan or half of it in the guise of group ; or probably there was some justice on the side of others, a vast majority of Indians, who interpreted them to mean that

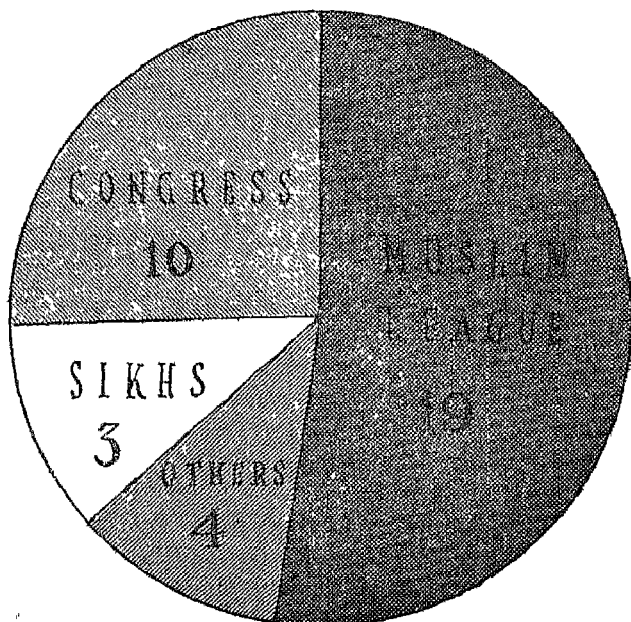


DIAGRAM 3

Section 'B' Constituent Assembly

the individual wishes of the provinces, such as Assam in the North-Eastern Group and the North-West Frontier and Sind in the North-Western Group would prevail in the initial agreement. In either case it was clearly the duty of the British Government to let it be settled by the Federal Court of India without its own 'legal' intentions being gratuitously declared in advance. The unfortunate feeling in India remains that the opinion was political than legal and was proclaimed against all canons and usage of law solely for

the purpose of retaining at least one Muslim bloc in the world in the present international situation.

The constitutional effect of the declaration has been even more disastrous on the autonomy of the Constituent Assembly. Because this declaration is nothing short of a dictation of what should be that body's policy. This is precisely the desideratum of Mr. Jinnah and the Muslim League whose insistence on the subordinate and unsovereign nature of the Constituent Assembly derives from their shrewd understanding of the identity of aims between themselves and the British. In effect, it means that the price demanded by the League for entering the Constituent Assembly is its subservience to British intentions and the British declaration has since awarded that price to the League, even without the latter deciding to enter the Assembly as a *quid pro quo*. After this act of violation, there is nothing left in the sovereignty of the Assembly, as the British have made it; but if there were any doubt of it, the British declaration has also cleared it by stressing that the transfer of power would be made only if the constitution devised by the Assembly satisfied all 'parts of the country'. Mr. Attlee who is the author of this declaration did not probably reckon the fact that according to his own declaration provinces could be forced into grouping and have a constitution foisted on them by a simple majority from other provinces !

But in spite of all this, Pandit Jawaharlal Nehru, captain of the ship of State, has proclaimed that the Constituent Assembly is sovereign. He only means that it will remain sovereign, and once having been created, it will maintain its sovereignty, all the politico-legal temporisings of the British Government notwithstanding. Nor has Pandit Nehru failed to emphasize the fact that such sovereignty not be mere sovereignty of the majority but that the

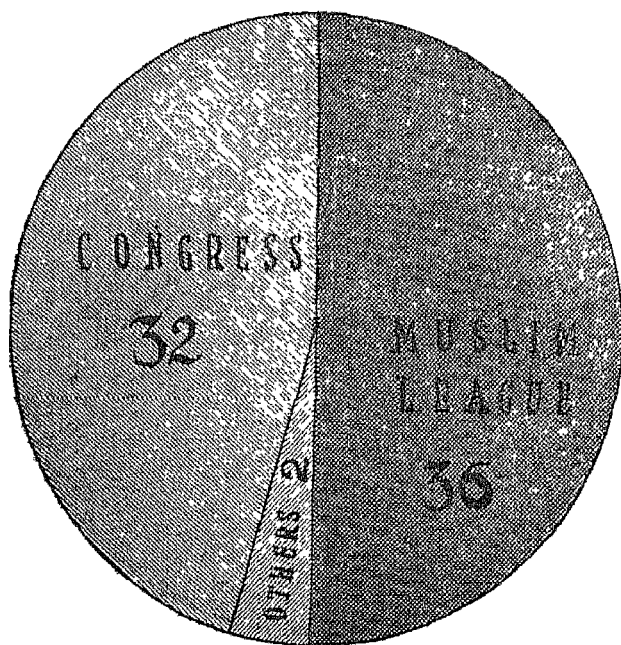


DIAGRAM 4

Section 'C' Constituent Assembly.

ideal of sovereignty would be governed by the consideration of achieving agreement among the various interests represented in the Assembly. The question of sovereignty can, however, arise only after a constitution is ready formulated, which Britain can reject only at the peril of provoking a conflict bigger than ever in the past. The leaders of the Congress are not unaware of such a danger and that is why they have repeatedly described the Constituent Assembly as but a stage in the struggle for freedom, and Pandit Nehru has even referred to another Constituent Assembly if need and occasion should arise for it.

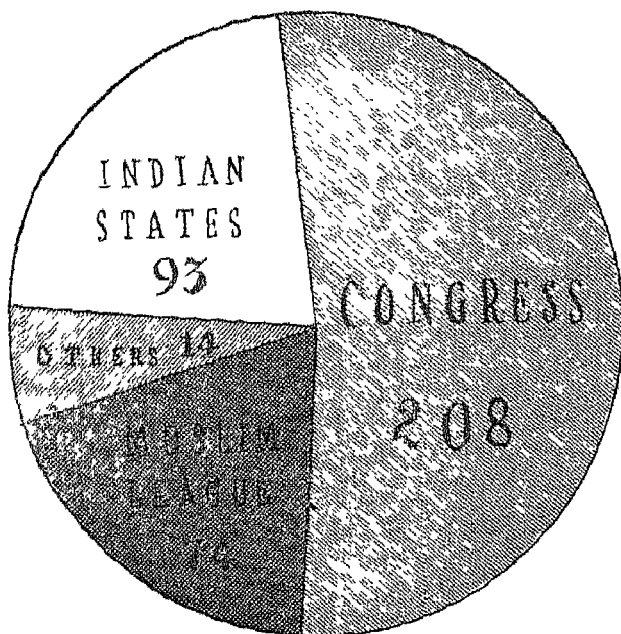


DIAGRAM 5.

Union Constituent Assembly Final Stage (Others include Sikhs)

The Congress has, however, a positive programme for constitution-making. Acharya Kripalani's presidential address contains a declaration of political ideology, which envisages the setting up of a federal Republic founded on all the known safeguards of democracy, namely equality of status and opportunity for all citizens, decentralisation of administration through a suitable federal machinery and economic decentralisation which without impeding progress will avoid the evils of concentration of wealth. These ideals are not meant to fetter the right of the Constituent

Assembly to determine the principles of the constitution, but remain the best expression of a political doctrine, which has found express or implicit acceptance among Indians of all parties

The Constituent Assembly has now a great opportunity. It can evolve a constitution, whose provisions may so liberally and wisely be formulated as to satisfy even its present detractors, if not all including the professional and inveterate implacables among them. If the constitution that results is such as to rally the support of all, dissolving past opposition, it will have acquitted its sovereignty without being tempted to fight for it. But if even so the country has to launch a fight to vindicate its sovereignty, the Constituent Assembly will have served a great purpose. Either it will prove an unqualified success or a cause for a crusade. In either case it will prelude a great beginning in our history.

CHAPTER V

EXPERIENCE OF OTHER COUNTRIES

America

The earliest approach to a Constituent Assembly which resulted in building up a permanent constitution is to be met with in the United States of America. The thirteen English colonies became independent units in 1774-75 and came to be governed by self-appointed congresses or conventions. The latter laid down the foundations of their future constitutions without getting them formally ratified by the electorate. It was a period of transition as the nation was passing through its birth pangs. And it was in 1787 that a special convention was called into being for the specific purpose of devising a federal constitution for the country.

Here for the first time a Constituent Assembly in an embryonic state was ushered into the stage of modern history. Out of the 73 delegates who were elected by the States' legislatures, only 55 attended the convention and of these 16 did not sign the final draft of the constitution. When the latter was submitted for ratification only eleven out of the thirteen states ratified it before the end of 1788. The proceedings were held in secret and the presence of seven out of thirteen states formed the quorum. The constitution began to function from April 30, 1789 with Washington as the first President. Most probably we will soon have as the first President of the Indian Union a personality who will have all the glamour of a George Washington.

France

The French are well known for their inventiveness in the field of politics and no less for their wealth of imagina-

tion in the realm of letters. The French are nothing if not brilliant and their brilliance gave birth to great political Ideas. The greatest contribution of France to the progress of mankind was her conception of "Liberty, Equality and Fraternity"—a slogan which has toppled many an empire and moved men's hearts as no other single slogan has.

The second great contribution of France to politics was her theory and practice of the Constituent Assembly method. All the Republican constitutions of France from the year 1791 have been hammered out by Constituent Assemblies returned on universal suffrage. Big and unwieldy, these Assemblies should have been. But they were by no means inefficient or corrupt. Though some of the constitutions turned out to be mere paper constitutions owing to fast-changing political conditions, the last one inaugurated in 1875 has worked successfully for about seventy years. Britain is said to enjoy the blessings of an 'unwritten constitution' while France has been called a classic land of Constituent Assemblies. Even today a Constituent Assembly is sitting in France deliberating over setting up a new constitutional structure for the country.

Germany

Germany in 1848 was faced with a dilemma very similar to the one we are asked to solve today in this country. The Revolutionary leaders aimed at unifying Germany under one Central Government and to achieve this, they had to win over the sympathy of the innumerable states. The latter were, in fact, in no mood to sign away their powers to a central Government devised on a democratic pattern. But Revolution was stalking through the whole of Europe and the German extremists hit on the democratic device of a Constituent Assembly. At Frankfurt the Assembly met and its de-

liberations lasting for about a year resulted in one of the finest constitutions ever devised by the wit of man. The unity of Germany was sought to be strengthened by the silken bonds of democracy. But unfortunately the democratic movement was suppressed and the constitution became a dead letter. Here was a lesson for the unthinking advocates of the Constituent Assembly method. Yes, the Indian Constituent Assembly may do a fine job of work and produce a well-balanced constitution. But there can be no guarantee that it will be worked out unless those who are elected to make it also develop a sanction to enforce it when made. On the road to India's freedom, the Constituent Assembly will be only a half-way house, a resting place where the future course of action can be discussed and decided subject, of course, to the political weather prevailing outside.

More than seventy years elapsed before the next attempt was made in Germany. Kaiser had abdicated in 1919 and the Right wing socialists were keen on giving the country a democratic government. The constitution of the last German Republic was the result of a Constituent Assembly of 421 members who met at Weimar. Had this not been reversed by the birth of Nazi dictatorship in 1933, the recent history of the world would have been far different. The constitution broke down not because it was ill-conceived but because the march of international events had given rise to the development of Fascism in Germany.

Ireland

After centuries of travail and struggle Ireland at last got the chance of framing a constitution for herself through the achinery of a Constituent Assembly in 1922. Elected on a wide franchise, the Assembly had 130 members. A lot of spade work had been done by the Provisional Gov-

vernment earlier. The latter had set up a Constitution Committee of ten members and this committee drafted three schemes from which the Provincial Government hammered out the final draft in consultation with the law officers of the British and Irish Government. This draft constitution was released on June 15, 1922, the day on which elections to the Constituent Assembly was to take place. The country was in favour of the draft constitution and the Assembly passed two readings of the Constitution Bill before going into a Committee. After being further amended and revised, the Bill received its final approval on October 25, 1922. This was followed by a Confirmatory Act of the British Parliament and also by a Royal Proclamation on December 6, 1922. This gave the Republic of Ireland a Dominion touch, which was much resented by the Irish people. According to Prof. K. B. Keith, "while in the case of the Dominions, it has been frankly conceded that the Constitution rest without exception on the basis of Imperial Acts, the Irish view has always been that the constitution was valid apart from the Imperial Acts, on the ground that all power in Ireland came from the people of Ireland and not from any British grant, a doctrine not naturally accepted in the United Kingdom and in 1935 formally repudiated by the Privy Council." The Irish view was expressed in Article 2 of the Constitution which said : "All powers of Government and all authority legislative, executive and judicial in Ireland are derived from the people of Ireland and the same shall be exercised in the Irish Free State (*Saorstát Éireann*) through the organisations established by or under and in accord with this Constitution."

An interesting characteristic of the Irish Constituent Assembly was that it had its two distinct personalities, constituent and legislative, rigorously separated from one another. It was the Third Dail which declared itself into a Con-

situent Assembly and urgent measures of a legislative character were passed as decrees or orders of the Provisional Government. According to N. Mansergh, this rigid separation of the constituent and legislative power emphasized the more important issue, namely that, unlike the Dominion Constitutions, that of the Free State emanated from a National Constituent Assembly. As it was generally realised that the constitution would call for a good deal of adjustments in the process of its operation, the Constituent Assembly decided that amendments to the constitution might be made by ordinary legislative procedure during the first eight years after its enactment. This arrangement worked so well that it was further extended by another term of 8 years. The Indian Constituent Assembly might with advantage agree to similar procedure in view of identical conditions prevailing in this country.

Canada

The first British Colony to get self-government, Canada went through an evolutionary process of constitutional development. The Constitutional Act of 1791 was the first enactment of significance under which Upper Canada was separated from Quebec. In 1833 came the demand from the leaders of Lower Canada for a Convention to bring about a constitutional settlement. Though this demand was rejected by the Secretary of State for Colonies, Earl of Durham was sent with the specific purpose of going into the question of constitutional reforms. Durham produced his famous report known as *Durham Report*, recommending responsible self-government and the union of the two Canadas. Then followed the Union Act of 1840.

The first convention to settle the constitutional problem met in 1864 when a number of resolutions outlining the basis of a new constitution were passed and latter approved by the Canadian Parliament. The Canadian delegates who

went to England in 1866 to discuss the draft constitution with the British Government had the satisfaction of getting their scheme ratified finally by the British Parliament. The Dominion of Canada came into existence on July 1, 1867.

Australia

More than one Convention had to meet and deliberate over long periods before Australia could get a full-fledged Dominion constitution, though questions such as the need for a Provisional Government and the place of Sovereignty did not arise in the acute form in which they made their appearance in Ireland. It was an evolutionary process in Australia and when public opinion made itself felt on the need for a federal constitution, the Convention came into being. After the election of the President and the appointment of the Clerk of the Convention, the Leader of the House was elected. It was left to him to pilot a series of resolutions laying down the general principles of the constitution. These resolutions were discussed and passed by the entire house before the latter converted itself into three committees. The first was the Constitutional Committee which went into the question of constitutional set-up and distribution of powers and functions. The second was the Finance Committee which took up for consideration all matters relating to finance, taxation, communications and commercial practice. The third committee concerned itself with matters affecting judiciary, its jurisdiction, powers etc. The outcome of the deliberations of the last two committees was reported to the Constitutional Committee. The latter requisitioned the help of a Drafting Committee which drafted the Bill. On April 12, 1897 the Bill was laid before the Convention. The Leader of the House again was entrusted with the task of expounding the Bill and getting it passed. Though the Convention at this stage converted itself into a

committee of the whole house, it took only 10 days to give its final approval to the Bill. But in September of the same year it had to meet again to revise the draft constitution in view of certain amendments suggested by the colonial legislatures. The entire draft was on the anvil again and it was on March 16, 1808 that the bill was finally passed by the Convention. The British Parliament ratified the federal constitution by passing the Commonwealth of Australia Act of 1900.

South Africa

Constitution-making in South Africa had a chequered career and it was not till 1908 that a Convention actually met. To this National Convention were elected thirty delegates by the four self-governing colonies of Cape Colony, Transval, Orange Free State and Natal. There was no equality of representation between them. Cape Colony sent twelve delegates, Transval eight, Orange Free State and Natal five each. The convention sat for over four months and produced a constitution based on a unitary basis. This draft constitution was laid before the Colonial Parliaments for their opinion and their suggestions were incorporated in the final draft which was sent to England. The Imperial Parliament passed the South Africa Act in 1909.

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CABINET DELEGATION'S STATEMENT OF MAY. 16.

1. On March 15th last just before the despatch of the Cabinet Delegation to India Mr. Attlee, the British Prime Minister, used these words :—

"My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide ; but our desire is to help her to set up forthwith the machinery for making that decision."

"I hope that India and her people may elect to remain within the British Commonwealth. I am certain that they will find great advantages in doing so."

"But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so, it will be for us to help to make the transition as smooth and easy as possible."

2. Charged in these historic words we—the Cabinet Ministers and the Viceroy—have done our utmost to assist the two main political parties to reach agreement upon the fundamental issue of the unity or division of India. After prolonged discussions in New Delhi we succeeded in bringing

the Congress and the Muslim League together in Conference at Simla. There was a full exchange of views and both parties were prepared to make considerable concessions in order to try and reach a settlement but it ultimately proved impossible to close the remainder of the gap between the parties and so no agreement could be concluded. Since no agreement has been reached we feel that it is our duty to put forward what we consider are the best arrangements possible to ensure a speedy setting up of the new constitution. *This statement is made with the full approval of His Majesty's Government in the United Kingdom.*

3. We have accordingly decided that immediate arrangements should be made whereby Indians may decide the future constitution of India and an Interim Government may be set up at once to carry on the administration of British India until such time as a new Constitution can be brought into being. We have endeavoured to be just to the smaller as well as to the larger sections of the people ; and to recommend a solution which will lead to a practicable way of governing the India of the future, and will give a sound basis for defence and a good opportunity for progress in the social, political and economic field.

Universal desire for unity of India

4. It is not intended in this statement to review the voluminous evidence that has been submitted to the Mission; but it is right that we should state that it has shown an almost universal desire, outside the supporters of the Muslim League, for the unity of India.

5. This consideration did not, however, deter us from examining closely and impartially the possibility of a partition of India ; since we were greatly impressed by the very

genuine and acute anxiety of the Muslims lest they should find themselves subjected to a perpetual Hindu-majority rule.

~ This feeling has become so strong and widespread amongst the Muslims that it cannot be allayed by mere paper safeguards. If there is to be internal peace in India it must be secured by measures which will assure to the Muslims a control in all matters vital to their culture, religion, and economic or other interests.

Pakistan diagnosed

6. We therefore examined in the first instance the question of a separate and fully independent sovereign State of Pakistan as claimed by the Muslim League. Such a Pakistan would comprise two areas ; one in the north-west consisting of the Provinces of the Punjab, Sind, North-West Frontier, and British Baluchistan ; the other in the north-east consisting of the Provinces of Bengal and Assam. The League were prepared to consider adjustment of boundaries at a later stage, but insisted that the principle of Pakistan should first be acknowledged. The argument for a separate State of Pakistan was based, first, upon the right of the Muslim majority to decide their method of Government according to their wishes, and secondly, upon the necessity to include substantial areas in which Muslims are in a minority, in order to make Pakistan administratively and economically workable.

. The size of the non-Muslim minorities in a Pakistan comprising the whole of the six Provinces enumerated above

would be very considerable as the following figures* show :

North-Western Area—

	Muslim.	Non-Muslim.
Punjab	16 217 242	12,201,577
North-West Frontier Province	2,788,797	249,270
Sind	3,208,325	1,326,683
Br. Baluchistan	438,930	62,701
	22,653 294	13,840,231
	62.07%	37.93%

North-Eastern Area—

Bengal... ..	33,005,434	27,301,091
Assam... ..	3,442,479	6,762,254
	36 447,913	34,063,345
	51.69%	48.31%

The Muslim minorities in the remainder of British India number some 20 million dispersed amongst a total population of 188 million.

These figures show that the setting up of a separate sovereign State of Pakistan on the lines claimed by the Muslim League, would not solve the communal minority problem ; nor can we see any justification for including within a sovereign Pakistan those districts of the Punjab and of Bengal and Assam in which the population is predominantly non-Muslim. Every argument that can be used in favour of Pakistan, can equally in our view be used in favour of the exclusion of the non-Muslim areas from Pakistan. This point would particularly affect the position of the Sikhs.

7. We therefore considered whether a smaller sovereign Pakistan confined to the Muslim majority areas alone might be a possible basis of compromise. Such a Pakistan is re-

All population figures in this Statement are from the most recent census taken in 1941.

garded by the Muslim League as quite impracticable because it would entail the exclusion from Pakistan of (a) the whole of the Ambala and Jullundur Divisions in the Punjab ; (b) the whole of Assam except the district of Sylhet ; and (c) a large part of Western Bengal, including Calcutta, in which city the Muslims form 23·6 per cent of the population. We ourselves are also convinced that any solution which involves a radical partition of the Punjab and Bengal, as this would do, would be contrary to the wishes and interests of a very large proportion of the inhabitants of these Provinces. Bengal and the Punjab each has its own common language and a long history and tradition. Moreover, any division of the Punjab would of necessity divide the Sikhs leaving substantial bodies of Sikhs on both sides of the boundary. We have therefore been forced to the conclusion that neither a larger nor a smaller sovereign State of Pakistan would provide an acceptable solution for the communal problem.

8. Apart from the great force of the foregoing arguments there are weighty administrative, economic and military considerations. The whole of the transportation and postal and telegraph systems of India have been established on the basis of a united India. To disintegrate them would gravely injure both parts of India. The case for a united defence is even stronger. The Indian armed forces have been built up as a whole for the defence of India as a whole, and to break them in two would inflict a deadly blow on the long traditions and high degree of efficiency of the Indian Army and would entail the gravest dangers. The Indian Navy and Indian Air Force would become much less effective. The two sections of the suggested Pakistan contain the most vulnerable frontiers in India and for a successful defence in depth the area of Pakistan would be insufficient.

9. A further consideration of importance is the greater difficulty which the Indian States would find in associating themselves with a divided British India.

10. Finally there is the geographical fact that the two halves of the proposed Pakistan State are separated by some seven hundred miles and the communications between them both in war and peace would be dependent on the goodwill of Hindustan.

11. *We are therefore unable to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign States.*

Congress scheme rejected

12. This decision does not however blind us to the very real Muslim apprehensions that their culture and political and social life might become submerged in a purely unitary India, in which the Hindus with their greatly superior numbers must be a dominating element. To meet this the Congress have put forward a scheme under which Provinces would have full autonomy subject only to a minimum of Central subjects, such as Foreign Affairs, Defence and Communications.

Under this scheme Provinces, if they wished to take part in economic and administrative planning on a large scale, could cede to the Centre optional subjects in addition to the compulsory ones mentioned above.

13. Such a scheme would, in our view, present considerable constitutional disadvantages and anomalies. It would be very difficult to work a Central Executive and Legislature in which some Ministers, who dealt with Compulsory subjects, were responsible to the whole of India while other Ministers, who dealt with Optional subjects, would be

responsible only to those Provinces which had elected to act together in respect of such subjects. This difficulty would be accentuated in the Central Legislature, where it would be necessary to exclude certain members from speaking and voting when subjects with which their Provinces were not concerned were under discussion.

Apart from the difficulty of working such a scheme, we do not consider that it would be fair to deny to other Provinces, which did not desire to take the optional subjects at the Centre, the right to form themselves into a group for a similar purpose. This would indeed be no more than the exercise of their autonomous powers in a particular way.

Indian States

14. Before putting forward our recommendation we turn to deal with the relationship of the Indian States to British India. It is quite clear that with the attainment of independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government. This fact has been fully recognised by those whom we interviewed from the States. They have at the same time assured us that the States are ready and willing to co-operate in the new development of India. The precise form which their co-operation will take must be a matter for negotiation during the building up of the new constitutional structure, and it by no means follows that it will be identical for all the States. We have not therefore dealt with the States in the same detail as the Provinces of British India in the paragraphs which follow.

15. We now indicate the nature of a solution which in our view would be just to the essential claims of all parties, and would at the same time be most likely to bring about a stable and practicable form of constitution for All-India.

We recommend that the constitution should take the following basic form :—

- (1) *There should be a Union of India, embracing both British India and the States, which should deal with the following subjects : Foreign Affairs, Defence, and Communications ; and should have the powers necessary to raise the finances required for the above subjects.*
- (2) *The Union should have an Executive and a Legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the Legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.*
- (3) *All subjects other than the Union Subjects and all residuary powers should vest in the Provinces.*
- (4) *The States will retain all subjects and powers other than those ceded to the Union.*
- (5) *Provinces should be free to form Groups with executives and legislatures, and each Group could determine the Provincial subjects to be taken in common.*
- (6) *The constitutions of the Union and of the Groups should contain a provision whereby any Province could, by a majority vote of its Legislative As-*

sembly, call for a reconsideration of the terms of the constitution after an initial period of 10 years and at 10 yearly intervals thereafter.

16. It is not our object to lay out the details of a constitution on the above lines, but to set in motion the machinery whereby a constitution can be settled by Indians for Indians.

It has been necessary however for us to make this recommendation as to the broad basis of the future constitution because it became clear to us in the course of our negotiations that not until that had been done was there any hope of getting the two major communities to join in the setting up of the constitution-making machinery.

Elections to Constituent Assembly

17. We now indicate the constitution-making machinery which we propose should be brought into being forthwith in order to enable a new constitution to be worked out.

18. In forming any Assembly to decide a new Constitutional structure the first problem is to obtain as broad-based and accurate a representation of the whole population as is possible. The most satisfactory method obviously would be by election based on adult franchise ; but any attempt to introduce such a step now would lead to a wholly unacceptable delay in the formulation of the new Constitution. The only practicable alternative is to utilize the recently elected Provincial Legislative Assemblies as the electing bodies. There are, however, two factors in their composition which make this difficult. First, the numerical strengths of the Provincial Legislative Assemblies do not bear the same proportion to the total population in each Province. Thus, Assam with a population of 10 millions has a Legislative Assembly of 108 members while Bengal, with a

population six times as large, has an Assembly of only 250. Secondly, owing to the weightage given to minorities by the Communal Award, the strengths of the several communities in each Provincial Legislative Assembly are not in proportion to their numbers in the Province. Thus the number of seats reserved for Muslims in the Bengal Legislative Assembly is only 48 per cent of the total, although they form 55 per cent of the Provincial population. After a most careful consideration of the various methods by which these inequalities might be corrected, we have come to the conclusion that the fairest and most practicable plan would be—

- (a) to allot to each Province a total number of seats proportional to its population, roughly in the ratio of one to a million, as the nearest substitute for representation by adult suffrage.
- (b) to divide this provincial allocation of seats between the main communities in each Province in proportion to their population.
- (c) to provide that the representatives allotted to each community in a Province shall be elected by the members of that community in its Legislative Assembly.

We think that for these purposes it is sufficient to recognise only three main communities in India : General, Muslim, and Sikh, the "General" community including all persons who are not Muslims or Sikhs. As the smaller minorities would, upon the population basis, have little or no representation since they would lose the weightage which assures them seats in the Provincial Legislatures, we have made the arrangements set out in paragraph 20 below to give them a full representation upon all matters of special interest to the

19. (i) We therefore propose that there shall be elected by each Provincial Legislative Assembly the following numbers of representatives, each part of the Legislature (General, Muslim or Sikh) electing its own representatives by the method of proportional representation with the single transferable vote :—

SECTION A			
PROVINCE	GENERAL	MUSLIM	TOTAL
Madras	45	4	49
Bombay	19	2	21
United Provinces	47	8	55
Bihar	31	5	36
Central Provinces	16	1	17
Orissa	9	—	9
Total	<u>167</u>	<u>20</u>	<u>187</u>

SECTION B				
PROVINCE	GENERAL	MUSLIM	SIKH	TOTAL
Punjab	8	16	4	28
N. W. F. P.	—	3	—	3
Sind	1	3	—	4
Total	<u>9</u>	<u>22</u>	<u>4</u>	<u>35</u>

SECTION C			
POVINCE	GENERAL	MUSLIM	TOTAL
Bengal	27	33	60
Assam	7	3	10
Total	<u>34</u>	<u>36</u>	<u>70</u>
Total for British India			292
Maximum for Indian States			93
			<u>385</u>

Note.—In order to represent the Chief Commissioner's Provinces there will be added to Section A the Member representing Delhi in the Central Legislative Assembly, the Member representing Ajmer-Merwara in the Central Legislative Assembly, and a representative to be elected by the Coorg Legislative Council.

To Section B will be added a representative of British Baluchistan.

(ii) It is the intention that the States should be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculations adopted for British India, exceed 93, but the method of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a Negotiating Committee.

(iii) The representatives thus chosen shall meet at New Delhi as soon as possible.

Procedure

(iv) A preliminary meeting will be held at which the general order of business will be decided, a Chairman and other officers elected, and an Advisory Committee (see paragraph 20 below) on the rights of citizens, minorities, and tribal and excluded areas set up. Thereafter the provincial representatives will divide up into the three sections shown under A, B, and C, in the Table of Representation in subparagraph (i) of this paragraph.

(v) These sections shall proceed to settle the Provincial Constitutions for the Provinces included in each section, and shall also decide whether any Group Constitution shall be set up for those Provinces and, if so, with what provincial

subjects the Group should deal. Provinces shall have the power to opt out of the Groups in accordance with the provisions of sub-clause (viii) below.

(vi) The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution.

(vii) In the Union Constituent Assembly resolutions varying the provisions of paragraph 15 above or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities.

The Chairman of the Assembly shall decide which (if any) of the resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision.

(viii) As soon as the new constitutional arrangements have come into operation, it shall be open to any Province to elect to come out of any Group in which it has been placed. Such a decision shall be taken by the new legislature of the Province after the first general election under the new constitution.

Minority and Fundamental Rights

20. The Advisory Committee on the rights of citizens, minorities, and tribal and excluded areas should contain full representation of the interests affected, and their function will be to report to the Union Constituent Assembly upon the list of Fundamental Rights, the clauses for the protection of minorities, and a scheme for the administration of the tribal and excluded areas, and to advise whether these rights should be incorporated in the Provincial, Group, or Union constitution.

21. His Excellency the Viceroy will forthwith request the Provincial Legislatures to proceed with the election of their representatives and the States to set up a Negotiating Committee. It is hoped that the process of constitution-making can proceed as rapidly as the complexities of the task permit so that the interim period may be as short as possible.

22. *It will be necessary to negotiate a Treaty between the Union Constituent Assembly and the United Kingdom to provide for certain matters arising out of the transfer of power.*

"Interim" Government

23. While the constitution-making proceeds, the administration of India has to be carried on. We attach the greatest importance therefore to the setting up at once of an interim Government having the support of the major political parties. It is essential during the interim period that there should be the maximum of co-operation in carrying through the difficult tasks that face the Government of India. Besides the heavy task of day-to-day administration, there is the grave danger of famine to be countered ; there are decisions to be taken in many matters of post-war development which will have a far-reaching effect on India's future ; and there are important international conferences in which India has to be represented. For all these purposes a Government having popular support is necessary. The Viceroy has already started discussions to this end, and hopes soon to form an Interim Government in which all the portfolios, including that of War Member, will be held by Indian leaders having the full confidence of the people. The British Government, recognising the significance of the changes in the Government of India, will give the fullest measure of

co-operation to the Government so formed in the accomplishment of its tasks of administration and in bringing about as rapid and smooth a transition as possible.

24 To the leaders and people of India who now have the opportunity of complete independence we would finally say this. We and our Government and countrymen hoped that it would be possible for the Indian people themselves to agree upon the method of framing the new constitution under which they will live. Despite the labours which we have shared with the Indian Parties, and the exercise of much patience and goodwill by all, this has not been possible. We therefore now lay before you proposals which, after listening to all sides and after much earnest thought, we trust will enable you to attain your independence in the shortest time and with the least danger of internal disturbance and conflict. These proposals may not, of course, completely satisfy all parties, but you will recognise with us that at this supreme moment in Indian history statesmanship demands mutual accommodation.

We ask you to consider the alternative to acceptance of these proposals. After all the efforts which we and the Indian Parties have made together for agreement, we must state that in our view there is small hope of peaceful settlement by agreement of the Indian Parties alone. The alternative would therefore be a grave danger of violence, chaos, and even civil war. The result and duration of such a disturbance cannot be foreseen ; but it is certain that it would be a terrible disaster for many millions of men, women and children. This is a possibility which must be regarded with equal abhorrence by the Indian people, our own countrymen, and the world as a whole.

We therefore lay these proposals before you in the profound hope that they will be accepted and operated by

you in the spirit of accommodation and goodwill in which they are offered. We appeal to all who have the future good of India at heart to extend their vision beyond their own community interest to the interests of the whole four hundred millions of the Indian people.

We hope that the new independent India may choose to be a member of the British Commonwealth. We hope in any event that you will remain in close and friendly association with our people. But these are matters for your own free choice. Whatever that choice may be we look forward with you to your ever increasing prosperity among the great nations of the world, and to a future even more glorious than your past.

CABINET DELEGATION'S STATEMENT OF MAY, 25

The Delegation have considered the statement of the President of the Muslim League dated 22nd May and the Resolution dated 24th May of the Working Committee of the Congress.

2. The position is that since the Indian leaders, after prolonged discussion, failed to arrive at an agreement, the Delegation put forward their recommendations as the nearest approach to reconciling the views of the two main parties. The scheme stands as a whole and can only succeed if it is accepted and worked in a spirit of cooperation.

3. The Delegation wish also to refer briefly to a few points that have been raised in the statement and resolution.

Constituent Assembly to be sovereign

4. The authority and the functions of the Constituent Assembly, and the procedure which it is intended to follow are clear from the Cabinet Delegation's statement. *Once the Constituent Assembly is formed and working on this basis, there is no intention of interfering with its discretion or questioning its decisions.* When the Constituent Assembly has completed its labours, His Majesty's Government will recommend to Parliament such action as may be necessary for the cession of sovereignty to the Indian people, subject only to two matters which are mentioned in the statement

and which we believe are not controversial, namely, adequate provision for the protection of the minorities (paragraph 20 of the Statement) and willingness to conclude a treaty with His Majesty's Government to cover matters arising out of the transfer of power (paragraph 22 of the Statement).

x x x x x

Grouping

8. The interpretation put by the Congress resolution on paragraph 15 of the Statement to the effect that the Provinces can in the first instance make the choice whether or not to belong to the section in which they are placed does not accord with the Delegation's intentions. The reasons for the grouping of the Provinces are well known and this is an essential feature of the scheme and can only be modified by agreement between the parties. The right to opt out of the Groups after the constitution-making has been completed will be exercised by the people themselves, since at the first election under the new provincial constitution this question of opting out will obviously be a major issue and all those entitled to vote under the new franchise will be able to take their share in a truly democratic decision.

9. The question of how the States representatives should be appointed to the Constituent Assembly is clearly one which must be discussed with the States. It is not a matter for decision by the Delegation.

Interim Government

10. It is agreed that the Interim Government will have a new basis. That basis is that all portfolios, including that of the War Member, will be held by Indians; and that the Members will be selected in consultation with the

Indian political parties. These are very significant changes in the Government of India, and a long step towards independence. H.M.G. will recognise the effect of these changes, will attach the fullest weight to them, and will give to the Indian Government the greatest possible freedom in the exercise of the day-to-day administration of India.

11. As the Congress statement recognises, the present Constitution must continue during the interim period ; and the Interim Government cannot therefore be made legally responsible to the Central Legislature. There is, however, nothing to prevent the Members of the Government, individually or by common consent, from resigning, if they fail to pass an important measure through the Legislature, or if a vote of non-confidence is passed against them.

12. There is of course no intention of retaining British troops in India against the wish of an independent India under the new Constitution ; but during the interim period, which it is hoped will be short, the British Parliament has, under the present constitution, the ultimate responsibility for the security of India and it is necessary therefore that British troops should remain.

MEMORANDUM ON STATES' TREATIES AND PARAMOUNTCY

[This is in amplification of paragraph 14 of the Statement issued on May 16th by the Cabinet Delegation and His Excellency the Viceroy and was presented to His Highness the Chancellor of the Chamber of Princes.]

1. Prior to the recent statement of the British Prime Minister in the House of Commons an assurance was given to the Princes that there was no intention on the part of the Crown to initiate any change in their relationship with the Crown to initiate any change in their relationship with the Princes without their consent. It was at the same time stated that the Princes' consent to any changes which might emerge as a result of negotiations would not unreasonably be withheld. The Chamber of Princes has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature. H. M. G. have now declared that if the Succession Government or Governments in British India desire independence, no obstacle would be placed in their way. The effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth. The Delegation have come here to assist in resolving the difficulties which stand in the way of India fulfilling this wish.

2. During the interim period, which must elapse before the coming into operation of a new Constitutional structure

cture under which British India will be independent or fully self-governing, paramountcy will remain in operation. But the British Government could not and will not in any circumstances transfer paramountcy to an Indian Government.

3. In the meanwhile, the Indian States are in a position to play an important part in the formulation of the new Constitutional structure for India, and H.M.G. have been informed by the Indian States that they desire, in their own interests and in the interests of India as a whole, both to make their contribution to the framing of the structure, and to take their due place in it when it is completed. In order to facilitate this they will doubtless strengthen their position by doing everything possible to ensure that their administrations conform to the highest standard. Where adequate standards cannot be achieved within the existing resources of the State they will no doubt arrange in suitable cases to form or join administrative units large enough to enable them to be fitted into the constitutional structure. It will also strengthen the position of States during this formulative period if the various Governments which have not already done so take active steps to place themselves in close and constant touch with public opinion in their State by means of representative institutions.

4. During the Interim period it will be necessary for the States to conduct negotiations with British India in regard to the future regulation of matters of common concern, especially in the economic and financial field. Such negotiation, which will be necessary whether the States desire to participate in the new Indian Constitutional structure or not, will occupy a considerable period of time, and since some of these negotiations may well be incomplete when the new structure comes into being, it will, in order to avoid administrative difficulties, be necessary to arrive at an understand-

ing between the States and those likely to control the succession Government or Governments that for a period of time the then existing arrangements as to these matters of common concern should continue until the new agreements are completed. In this matter, the British Government and the Crown Representative will lend such assistance as they can should it be so desired.

5 When a new fully self-governing or independent Government or Governments come into being in British India, H. M. G's influence with these Governments will not be such as to enable them to carry out the obligations of paramountcy. Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus, as a logical sequence and in view of the desires expressed to them on behalf of the Indian States, His Majesty's Government will cease to exercise the powers of paramountcy. This means that the rights of the States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the paramount power will return to the States. Political arrangements between the States on the one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor Government or Governments in British India, or failing this, entering into particular political arrangements with it or them.

LORD PETHICK-LAWRENCE'S BROADCAST

*Extracts from the Secretary of State for India's
broadcast made on 16th May 1946*

The words which I shall speak to you are concerned with the future of a great people—the people of India. There is a passionate desire in the hearts of Indians expressed by the leaders of all their political parties, for independence. His Majesty's Government and the British people as a whole are fully ready to accord this independence whether within or without the British Commonwealth and hope that out of it will spring a lasting and friendly association between our two peoples on a footing of complete equality.

x x x x x

While we recognise the reality of the fear of the Muslim League, that in a purely unitary India their community with its own culture and way of life might become submerged in a majority Hindu rule, we do not accept the setting up of a separate Muslim sovereign state as a solution of the communal problem. "Pakistan," as the Muslim League would call their state, would not consist solely of Muslims; it would contain a substantial minority of other communities which would average over 40 per cent and in certain wide areas would even constitute a majority, as for instance in the city of Calcutta where the Muslims form less than one-third of the population. Moreover the complete separation of Pakistan from the rest of India would in our view gravely endanger the defence of the whole country by splitting the army into

two and by preventing that defence in depth which is essential in modern war. We therefore do not suggest the adoption of this proposal.

Three-Tier Constitution

Our own recommendations contemplate a constitution of three tiers at the top of which would be the Union of India with an executive and legislature empowered to deal with the essential subjects of external affairs, defence and communications and the finance necessary for these services. At the bottom would be the provinces which would have, apart from the subjects I have just named, complete autonomy. But we contemplate further that provinces will wish to unite together in groups to carry out, in common, services covering a wider area than that of a single province, and these groups may have, if they wish, legislatures and executives which in that event will be intermediate between those of the provinces and those of the Union.

On this basis which makes it possible for the Muslims to secure the advantages of a Pakistan without incurring the dangers inherent in the division of India we invite Indians of all parties to take part in framing a constitution. The Viceroy will accordingly summon to New Delhi representatives of British India who will be elected by the members of the provincial legislatures in such a way that as nearly as possible for each one million of the population there will be one representative, and that the proportion between the representatives of the main communities will be on the same basis.

Procedure

So far I have said nothing about the Indian States which comprise a third of the area of India and contain

about one quarter of the whole population. These States at present are each separately governed and have individual relationships with the British Crown. There is general recognition that when British India attains independence the ~~position~~ position of these States cannot remain unaffected, and it is anticipated that they will wish to take part in the constitution-making process and be represented in the all-India union. It does not however lie within our province to decide these matters in advance as they will have to be the subject of negotiation with the States before action can be taken.

The essence of statecraft is to envisage the probable course of future events but no statesmen can be wise enough to frame a constitution which will adequately meet all the requirements of an unknown future. We may be confident therefore that the Indians on whom falls the responsibility of creating the initial constitution will give it a reasonable flexibility and will make provision for it to be revised and amended as required from time to time.

x x x x x

The Government and people of Britain are not only willing, they are anxious to play their full part in achieving this result. But the constitution for India has to be framed by Indians and worked by Indians when they have brought it into being. We appreciate to the full the difficulties which confront them in embarking on this task. We have done and we will continue to do all that lies in our power to help them to overcome these difficulties. But the responsibility and the opportunity is theirs and in their fulfilment of it we wish them godspeed.

EXPOSITION OF THE CABINET DELEGATION'S STATEMENT BY SIR STAFFORD CRIPPS

The first thing I want to point out is what the Statement does *not* purport to do. It is of no use asking us "How do you propose to do this or that?" The answer will be *we* don't propose to do anything as regards decision upon a constitution, that is not for us to decide.

What we have had to do is to lay down one or two broad principles of how the constitution might be constructed and recommend those as foundations to the Indian People. You will notice we use the word "recommend" with regard to the ultimate constitutional forms with which we deal.

You may quite fairly ask, "But why do you recommend anything; why not leave it to the Indians?" The answer is that we are most anxious to get all Indians into some constitution making machinery as quickly as possible and the block at present is in this matter. We are therefore by this means trying to remove the block so that the constitution-making may start and progress freely and rapidly. We hope very earnestly that that will be the effect.

Indian Independence

Now that it has been finally and absolutely decided that India is to have the complete independence she desires, whether within or without the British Commonwealth as she chooses, we are anxious that she shall have it as soon as possible and the soonest is when there is a new constitutional structure decided upon by the Indian People.

It has been decided to make a start with the constitution-making right away. This does not mean a decision as to what the constitution shall finally be, that is for decision by the representatives of the Indian People. What it ~~does~~ mean is that the deadlock which has prevented a start on the process of constitution-making is to be removed once and for all.

Special Provision and Basic Formula


The form in which we propose that the constitution making bodies should be assembled is important for this reason. It permits of arriving at constitutions in the recommended form. It goes a little further than that in one respect. As we believe and hope that the two parties will come into this constitution making on the basis of our recommendations it would not be fair to either of them if the fundamental basis which we recommend could be easily departed from. So we stipulate that a departure from that basis which is laid down in paragraph 15 of the Statement should only be made if a majority of both communities agree to it. That I think is eminently fair to both parties. It does not mean that no departure can be made from the recommendations, but it does mean that the special provisions I have mentioned will apply to such resolutions in the Constituent Assembly of the Union. That is one special provision as to particular majorities, the only other is in relation to matters raising any major communal issue when a similar rule will apply. *All the rest is left to the free play of discussion and vote.*

Now a word about the States. The Statement in paragraph 14 makes the position quite clear that paramountcy cannot be continued after the new constitution comes into operation, nor can it be handed over to anyone else. It

isn't necessary for me to state—I am sure—that a contract or arrangement of this kind cannot be handed over to a third party without the consent of the States. They will therefore become wholly independent but they have expressed their wish to negotiate their way into the Union and that is a matter we leave to negotiation between the States and the British Indian parties.

There is one other important provision which I would like to stress as it is somewhat novel in constitution-making. We were met by the difficulty of how we could deal fairly with the smaller minorities, the Tribal and the excluded areas. In any constitution-making body it would be quite impossible to give them a weightage which would secure for them any effective influence without gravely upsetting the balance between the major parties. To give them a tiny representation would be useless to them. So we decided that minorities would be dealt with really in a double way. The major minorities, such as the Hindus in Muslim provinces, and the Muslims in Hindu provinces, the Sikhs in the Punjab and the depressed classes who had considerable representation in a number of Provinces would be dealt with by proportional representation in the main construction of the constitution-making bodies. But in order to give these minorities and particularly the smaller minorities like the Indian Christians and the Anglo-Indians and also the Tribal representatives a better opportunity of influencing minority provisions, we have made provision for the setting up by the constitution-making body of an influential advisory Commission which will take the initiative in the preparation of the list of fundamental rights, the minority protection clauses and the proposals for the administration of Tribal and Excluded areas. This Commission will make its recommendations to the constitution-

making body and will also suggest at which stage or stages in the constitution these provisions should be inserted, that is whether in the Union, Group or Provincial Constitutions or in any two or more of them.



“Intrinsically and as legally interpreted, the State Paper seems to me to be a brave and frank document. Nevertheless, the official interpretation would appear to be different from the popular. If it is so and prevails it will be a bad omen. During the long course of the history of British rule in India, the official interpretation has held sway. And, it has been enforced. I have not hesitated before now to say that the office of the law-giver, judge and executioner is combined in one person in India. Is not the State Document a departure from the imperialistic tradition? I have answered ‘yes’.”—Mahatma Gandhi in *Harizan*.

CORRESPONDENCE DURING TRIPARTITE TALKS

Basis for Negotiations

*(Letter from Lord Pethick-Lawrence to Maulana Abul
Kalam Azad and Mr. Jinnah, Dated 27th April 1946)*

The Cabinet Mission and His Excellency the Viceroy have carefully reviewed the opinions expressed to them by the various representatives they have interviewed and have come to the conclusion that they should make one further attempt to obtain agreement between the Muslim League and the Congress.

They realise that it would be useless to ask the two Parties to meet unless they were able to place before them a basis of negotiation which could lead to such an agreement.

I am therefore asked to invite the Muslim League to send four negotiators to meet the Cabinet Mission and the Viceroy together with a similar number from the Congress Working Committee with a view to discussing the possibility of agreement upon a scheme based upon the following fundamental principles :—

Suggested outline of Constitution

The future constitutional structure of British India to be as follows :—

A Union Government dealing with the following sub-

Foreign Affairs, Defence and Communications. There will be two groups of Provinces, the one of the predominantly Hindu Provinces and the other of the predominantly Muslim Provinces, dealing with all other subjects which the provinces in the respective groups desire to be dealt with in common. The Provincial Governments will deal with all other subjects and will have all the residuary Sovereign rights

It is contemplated that the Indian States will take their appropriate place in this structure on terms to be negotiated with them.

I would point out that we do not think it either necessary or desirable further to elaborate these principles as all other matters could be dealt with in the course of the negotiations.

If the Muslim League and Congress are prepared to enter into negotiations on this basis, you will perhaps be so good as to let me know the names of the four people appointed to negotiate on their behalf. As soon as I receive these I will let you know the locus of the negotiations which will in all probability be in Simla, where the climate will be more temperate.

CONGRESS PRESIDENT REPLIES

(Letter from the President of the Congress to Lord Pethick-Lawrence, Dated 28th April 1946.)

I thank you for your letter of April 27th. I have consulted my colleagues of the Congress Working Committee in regard to the suggestion made by you, and they desire me to inform you that they have always been willing to discuss fully any matters concerning the future of India with representatives of the Muslim League or any other organisation. I must point out, however, that the "fundamental principles" which you mention require amplification and elucidation in order to avoid any misunderstanding.

As you are aware, we have envisaged a Federal Union of autonomous units. Such a Federal Union must of necessity deal with certain essential subjects of which defence and its allied subjects are the most important. It must be organic and must have both an executive and legislative machinery as well as the finance relating to these subjects and the power to raise revenues for these purposes in its own right. Without these functions and powers it would be weak and disjointed and defence and progress in general would suffer. Thus among the common subjects in addition to Foreign Affairs, Defence and Communications, there should be Currency, Customs, Tariffs and such other subjects as may be found on closer scrutiny to be intimately allied to them.

Your reference to two groups of Provinces, the one of the predominantly Hindu Provinces and the other of the predominantly Muslim Provinces, is not clear. The only predominantly Muslim Provinces are the North-West Frontier Province, Sind and Baluchistan. Bengal and Punjab have a bare Muslim majority. We consider it wrong to form groups of Provinces under the Federal Union and more so on religious or communal basis. It also appears that you leave no choice to a Province in the matter of joining or not joining a group. It is by no means certain that a Province as constituted would like to join any particular group. In any event it would be wholly wrong to compel a Province to function against its own wish. While we agree to the Provinces having full powers in regard to all remaining subjects as well as the residuary powers, we have also stated that it should be open to any Province to exercise its option to have more common subjects with the Federal Union. Any sub-federation within the Federal Union would weaken the Federal Centre and would be otherwise wrong. We do not, therefore, favour any such development.

Regarding the Indian States we should like to make it clear that we consider it essential that they should be parts of the Federal Union in regard to the common subjects mentioned above. The manner of their coming into the Union can be considered fully later.

You have referred to certain "fundamental principles" but there is no mention of the basic issue before us, that is, Indian independence and the consequent withdrawal of the British army from India. It is only on this basis that we can discuss the future of India, or any interim arrangement.

While we are ready to carry on negotiations with any party as to the future of India we must state our convictions. that reality will be absent from any negotiations whilst an outside ruling power still exists in India.

I have asked three of my colleagues of the Congress Working Committee, namely, Pandit Jawaharlal Nehru, Sardar Vallabhai Patel and Khan Abdul Ghaffar Khan to accompany me in any negotiations that may take place as a result of your suggestion.

LEAGUE PRESIDENT'S REPLY

(Letter from the President of the Muslim League to Lord Pethick-Lawrence, dated 29th April 1946.)

I thank you for your letter of the 27th April, which I placed before my Working Committee yesterday morning.

My colleagues and I fully appreciate the further attempt that the Cabinet Mission and His Excellency the Viceroy are making to bring about an agreement between the Muslim League and the Congress by proposing a meeting of the representatives of the two organisations for the purpose of negotiating an agreement. They, however, desire me to invite your attention to the position taken up by the Muslim League since the passing of the Lahore Resolution in 1940 and, thereafter, successively endorsed by the All-India Muslim League Sections and again by the Convention of the Muslim League Legislators, as recently as the 9th of April, 1946, as per copy enclosed.

The Working Committee desire to point out that many important matters, both of principle and detail, in your brief letter, require elucidation and clarification, which, in their opinion, can be achieved at the meeting proposed by you.

Therefore, without prejudice or commitment, the Working Committee, in their anxiety to assist in finding an agreed solution of the Indian constitutional problem, have authorised me to nominate three representatives on behalf of the Muslim League to participate in the negotiations.

The following are the four names :—

1. Mr. M. A. Jinnah,
2. Nawab Mohammad Ismail Khan,
3. Nawabzada Liaquat Ali, Khan, and
4. Sardar Abdur Rab Nishtar.

AGENDA

1. Groups of Provinces—

- (a) Composition.
- (b) Method of deciding Group subjects.
- (c) Character of Group organisation.

2. Union—

- (a) Union subjects.
- (b) Character of Union Constitution.
- (c) Finance.

3. Constitution-making Machinery—

- (a) Composition.
- (b) Functions.

- (i) in respect of Union;
- (ii) in respect of Groups ;
- (iii) in respect of Provinces.

CONSTITUENT ASSEMBLY TO GIVE EFFECT TO INDEPENDENCE

(Letter from the President of Congress to Lord Petthick-Lawrence, dated 6th May, 1946).

My colleagues and I followed with care the proceedings of the conference yesterday and tried to understand what our conversations were leading up to. I confess to feeling somewhat mystified and disturbed at the vagueness of our talks and some of the assumptions underlying them. While we would like to associate ourselves with every effort to explore ways and means of finding a basis for agreement, we must not deceive ourselves, the Cabinet Mission or the representatives of the Muslim League into the belief that the way the conference has so far proceeded furnishes hope of success. Our general approach to the questions before us was stated briefly in my letter to you of April 28th. We find that this approach has been largely ignored and a contrary method has been followed. We realise that some assumptions have to be made in the early stages as otherwise there can be no progress. But assumptions which ignore or run contrary to fundamental issues are likely to lead to misunderstandings during the later stages.

British Army in India

In my letter of April 28th, I stated that the basic issue before us was that of Indian independence and the consequent withdrawal of the British army from India, for there can be no independence so long as there is a foreign

army on Indian soil. We stand for the independence of the whole of India now and not in the distant or near future. Other matters are subsidiary to this and can be fitly discussed and decided by the Constituent Assembly.

At the conference yesterday I referred to this again and we were glad to find that you and your colleagues, as well as the other members of the conference, accepted Indian independence as the basis of our talks. It was stated by you that the Constituent Assembly would finally decide about the nexus or other relationship that might be established between a free India and England. While this is perfectly true, it does not affect the position now, and that is the acceptance of Indian independence now.

If that is so then certain consequences inevitably follow. We felt yesterday that there was no appreciation of these consequences. A Constituent Assembly is not going to decide the question of independence, that question must be and, we take it, has been decided now. That Assembly will represent the will of the free Indian nation and give effect to it. It is not going to be bound by any previous arrangements. It has to be preceded by a Provisional Government which must function, as far as possible, as a government of free India, and which should undertake to make all arrangements for the transitional period.

Grouping

In our discussions yesterday repeated references were made to "groups" of Provinces functioning together, and it was even suggested that such a group would have an executive and legislative machinery. This method of grouping has not so far been discussed by us but still our talks seemed to presume all this. I should like to make it very clear that we are entirely opposed to any executive or legislative

machinery for a group of Provinces or units of the Federation. That will mean a sub-federation, if not something more, and we have already told you that we do not accept this. It would result in creating three layers of executive and legislative bodies, an arrangement which will be cumbersome, static and disjointed, leading to continuous friction. We are not aware of any such arrangement in any country.

We are emphatically of opinion that it is not open to the conference to entertain any suggestions for a division of India. If this is to come, it should come through the Constituent Assembly free from any influence of the present governing power.

Another point we wish to make clear is that we do not accept the proposal for parity as between groups in regard to the executive or legislature. We realise that everything possible should be done to remove fears and suspicions from the mind of every group and community. But the way to do this is not by unreal methods which go against the basic principles of democracy on which we hope to build up our constitution.

' SUGGESTED POINTS FOR AGREEMENT'

*(Letter from the Private Secretary to Lord Pethick-Lawrence
to the Presidents of the Congress and the Muslim
League, dated 8th May 1946)*

With reference to the Secretary of State's letter to you this morning the Cabinet Delegation wish me to send to you the enclosed document which is the paper to which the Secretary of State referred. The Delegation propose that this paper should be discussed at the next meeting to be held on Thursday afternoon at 3 p.m. if that is agreeable to the Congress/Muslim League delegates.

*(Enclosure with letter of 8th May),
Suggested points for agreement between the Representatives
of Congress and the Muslim League*

1. There shall be an All-India Union Government and Legislature dealing with Foreign Affairs, Defence, Communications, Fundamental Rights and having the necessary powers to obtain for itself the finances it requires for these subjects.

2. All the remaining powers shall vest in the Provinces.

3. Groups of Provinces may be formed and such groups may determine the Provincial subjects which they desire to take in common.

4. The groups may set up their own Executives and

5. The Legislature of the Union shall be composed of equal proportions from the Muslim-majority Provinces and from the Hindu-majority Provinces whether or not these or any of them have formed themselves into groups ; together with representatives of the States.

6. The Government of the Union shall be constituted in the same proportion as the Legislature.

7. The constitutions of the Union and the groups (if any) shall contain a provision whereby any Province can by a majority vote of its legislative assembly call for a reconsideration of the terms of the constitution after an initial period of 10 years and at 10 yearly intervals thereafter.

For the purpose of such reconsideration a body shall be constituted on the same basis as the original Constituent Assembly and with the same provisions as to voting and shall have power to amend the constitution in any way decided upon.

8. The constitution-making machinery to arrive at a constitution on the above basis shall be as follows :—

- A. Representatives shall be elected from each Provincial Assembly in proportion to the strengths of the various parties in that assembly on the basis of 1/10th of their numbers.
- B. Representatives shall be invited from the States on the basis of their population in proportion to the representation from British India.
- C. The Constituent Assembly so formed shall meet at the earliest date possible in New Delhi.
- D. After its preliminary meeting at which the general order of business will be settled it will divide into three sections, one section representing the

Hindu-majority Provinces, one section representing the Muslim-majority Provinces and one representing the States

- (E. The first two sections will then meet separately to decide the Provincial constitutions for their group and, if they wish, a group constitution.
- F. When these have been settled it will be open to any Province to decide to opt out of its original group and into the other group or to remain outside any group.
- G. Thereafter the three bodies will meet together to settle the constitution for the Union on the lines
 - agreed in paragraphs 1—7 above.
- H. No major point in the Union constitution which affects the communal issue shall be deemed to be passed by the Assembly unless a majority of both the two major communities vote in its favour.

9. The Viceroy shall forthwith call together the above constitution-making machinery which shall be governed by the provisions stated in paragraph 8 above.

SUGGESTIONS FROM THE CONGRESS ⁹

(Letter from the President of the Congress to Lord Pethick-Lawrence, dated 9th May 1946).

My colleagues and I have given the most careful consideration to the memorandum sent by you yesterday suggesting various points of agreement. On the 28th April I sent you a letter in which I explained briefly the Congress view-point in regard to certain "fundamental principles" mentioned in your letter of 27th April. After the first day of the conference, on May 6th, I wrote to you again to avoid any possible misunderstanding regarding the issues being discussed in the conference.

I now find from your memorandum that some of your suggestions are entirely opposed to our views and to the views repeatedly declared by the Congress. We are thus placed in a difficult position. It has been and is our desire to explore every avenue for a settlement and a change-over in India by consent, and for this purpose we are prepared to go far. But there are obvious limits beyond which we cannot go if we are convinced that this would be injurious to the people of India and to India's progress as a free nation.

In my previous letters I have laid stress on the necessity of having a strong and organic Federal Union. I have also stated that we do not approve of sub-federations or grouping of Provinces in the manner suggested, and are wholly opposed to parity in executives or legislatures as between wholly unequal groups. We do not wish to come in the

way of Provinces or other units co-operating together, if they so choose, but this must be entirely optional.

Solution by Arbitration

The proposals you have put forward are meant, we presume, to limit the free discretion of the Constituent Assembly. We do not see how this can be done. We are at present concerned with one important aspect of a larger problem. Any decision on this aspect taken now might well conflict with the decisions we, or the Constituent Assembly, might want to take on other aspects. The only reasonable course appears to us is to have a Constituent Assembly with perfect freedom to draw up its constitution, with certain reservations to protect the rights of minorities. Thus we may agree that any major communal issue must be settled by consent of the parties concerned, or, whether such consent is not obtained, by arbitration.

From the proposals you have sent us (8 D. E. F. G.) it would appear that two or three separate constitutions might emerge for separate groups, joined together by a flimsy common super-structure left to the mercy of the three disjointed groups.

There is also compulsion in the early stages for a Province to join a particular group whether it wants to or not. Thus why should the Frontier Province, which is clearly a Congress Province, be compelled to join any group hostile to the Congress?

We realise that in dealing with human beings, as individuals or groups, many considerations have to be borne in mind besides logic and reason. But logic and reason cannot be ignored altogether, and unreason and injustice are dangerous companions at any time and, more especially, when we are building for the future of hundreds of millions of human beings.

I shall now deal with some of the points in your memorandum and make some suggestions in regard to them.

No. 1.—We note that you have provided for the Union to have necessary powers to obtain for itself the finance it requires for the subjects it deals with. We think it should be clearly stated that the Federal Union must have power to raise revenues in its own right. Further that currency and customs must in any event be included in the Union subjects, as well as such other subjects as on closer scrutiny may be found to be intimately allied to them. One other subject is an essential and inevitable Union subject and that is Planning. Planning can only be done effectively at the Centre, though the Provinces or units will give effect to it in their respective areas.

The Union must also have power to take remedial action in cases of breakdown of the constitution and in grave public emergencies.

Nos. 5 and 6.—We are entirely opposed to the proposed parity, both in the Executive and Legislature, as between wholly unequal groups. This is unfair and will lead to trouble. Such a provision contains in itself the seed of conflict and the destruction of free growth. If there is no agreement on this or any similar matter, we are prepared to leave it to arbitration.

No. 7.—We are prepared to accept the suggestion that provision be made for a reconsideration of the constitution after ten years. Indeed the constitution will necessarily provide the machinery for its revision at any time.

The second clause lays down that reconsideration should be done by a body constituted on the same basis as the Constituent Assembly. This present provision is intended to meet an emergency. We expect that the constitution for

India will be based on adult suffrage. Ten years hence India is not likely to be satisfied with anything less than adult suffrage to express its mind on all grave issues.

No. 8-A.—We would suggest that the just and proper method of elections, fair to all parties, is the method of proportional representation by single transferable vote. It might be remembered that the present basis of election for the Provincial Assemblies is strongly weighted in favour of the minorities.

The Proportion of 1/10th appears to be too small and will limit the numbers of the Constituent Assembly too much. Probably the number would not exceed 200. In the vitally important tasks the Assembly will have to face, it should have larger numbers. We suggest that at least one-fifth of the total membership of the Provincial Assemblies should be elected for the Constituent Assembly.

No. 8-B.—This clause is vague and requires elucidation. But for the present we are not going into further details.

No. 8-D. E. F. G.—*I have already referred to these clauses. We think that both the formation of these groups and the procedure suggested are wrong and undesirable. We do not wish to rule out the formation of the groups if the Provinces desire. But this subject must be left open for decision by the Constituent Assembly. The drafting and settling of the constitution should begin with the Federal Union. This should contain common and uniform provisions for the Provinces and other units. The Provinces may then add to these.*

No. 8-H.—In the circumstances existing today we are prepared to accept some such clause. In case of disagreement the matter should be referred to arbitration.

I have pointed out above some of the obvious defects, as we see them, in the proposals contained in your memorandum. If these are remedied, as suggested by us, we might be in a position to recommend their acceptance by the Congress. But as drafted in the memorandum sent to us, I regret that we are unable to accept them.

On the whole, therefore, if the suggestions are intended to have a binding effect, with all the will in the world to have an agreement with the League, we must repudiate most of them. Let us not run into any evil greater than the one all of us three parties should seek to avoid.

If an agreement honourable to both the parties and favourable to the growth of free and united India cannot be achieved, we would suggest that an interim Provisional Government responsible to the elected members of the Central Assembly be formed at once and the matters in dispute concerning the Constituent Assembly between the Congress and the League be referred to an independent tribunal.

"MUSLIM LEAGUES' MINIMUM DEMANDS

[Memorandum by the President of the Muslim League embodying minimum demands by way of an offer, in accordance with the Conference decision, dated 12th May 1946. (Copies sent to the Cabinet Delegation and the Congress.)]

1. The six Muslim Provinces (Punjab, N.-W.F.P., Baluchistan, Sind, Bengal and Assam) shall be grouped together as one group and will deal with all other subjects and matters except Foreign Affairs, Defence and Communications necessary for Defence, which may be dealt with by the Constitution-making bodies of the two groups of Provinces—Muslim Provinces (hereinafter named Pakistan Group) and Hindu Provinces—sitting together.

2. There shall be a separate Constitution-making body for the six Muslim Provinces named above, which will frame Constitutions for the Group and the Provinces in the Group and will determine the list of subjects that shall be Provincial and Central (of the Pakistan Federation) with residuary sovereign powers vesting in the Provinces.

3. The method of election of the representatives to the Constitution-making body will be such as would secure proper representation to the various communities in proportion to their population in each Province of the Pakistan Group.

4. After the Constitutions of the Pakistan Federal Government and the Provinces are finally framed by the Constitution-making body, it will be open to any Province of the Group to decide to opt out of its Group, provided

the wishes of the people of that Province are ascertained by a referendum to opt out or not.

5. It must be open to discussion in the joint Constitution-making body as to whether the Union will have a Legislature or not. The method of providing the Union with finance should also be left for decision of the joint meeting of the two Constitution-making bodies, but in no event shall it be by means of taxation.

6. There should be parity of representation between the two Groups of Provinces in the Union Executive and the Legislature, if any.

7. No major point in the Union Constitution which affects the communal issue shall be deemed to be passed in the joint Constitution-making body, unless the majority of the members of the Constitution-making body, of the Hindu Provinces and the majority of the members of the Constitution-making body of the Pakistan Group, present and voting, are separately in its favour.

8. *No decision, legislative, executive or administrative, shall be taken by the Union in regard to any matter of controversial nature, except by a majority of three-fourths.*

9. In Group and Provincial Constitutions fundamental rights and safeguards concerning religion, culture and other matters affecting the different communities will be provided for.

10. The Constitution of the Union shall contain a provision whereby any Province can, by a majority vote of its Legislative Assembly, call for reconsideration of the terms of the Constitution, and will have the liberty to secede from the Union at any time after an initial period of ten years.

These are the principles of our offer for a peaceful and amicable settlement and this offer stands in its entirety and all matters mentioned herein are interdependent.



“WE INTEND TO MAKE IT SUCCEED”

—Pandit Jawaharlal Nehru

The Constituent Assembly is a new kind of organ which, once it meets, is self-governing and self-determining and will receive no directions from anyone outside it. At the same time it will work within a certain framework. The real thing that might limit its self-determining powers is not external authority but internal factors of the situation. If internally it cannot succeed, it cannot go far.

We recognize that and, therefore, we intend to make it succeed internally. The important thing about the Constituent Assembly has been and is that something has been created which, however small its beginnings may be, has the capacity of growth and can go in any direction it chooses.

What is most necessary in India generally is the absence of any interference from outside, because any kind of interference will only be resented and create complications.

Any Indian problem can only ultimately be solved by the people themselves. If others try to solve them, it will result in a worsening of the situation. Compulsion will be resisted and will nullify the chief virtue of the Cabinet Mission's plan to give a very large measure of self determination.

CONGRESS TERMS FOR AGREEMENT

(Points suggested on behalf of the Congress as a basis for agreement, 12th May, 1946).

- 1 The Constituent Assembly to be formed as follows :
 - (i) Representatives shall be elected by each Provincial Assembly by proportional representation (single transferable vote). The number so elected should be one-fifth of the number of members of the Assembly and they may be members of the Assembly or others.
 - (ii) Representatives from the States on the basis of their population in proportion to the representation from British India. How these representatives are to be chosen is to be considered later.

2. The Constituent Assembly shall draw up a constitution for the Federal Union. This shall consist of an All-India Federal Government and Legislature dealing with Foreign Affairs, Defence, Communications, Fundamental Rights, Currency, Customs and Planning, as well as such other subjects as, on closer scrutiny, may be found to be intimately allied to them. The Federal Union will have necessary powers to obtain for itself the finances it requires for these subjects and the power to raise revenues in its own right. The Union must also have power to take remedial action in cases of breakdown of the constitution and in grave public emergencies.

3. All the remaining powers shall vest in the Provinces or Units.

4. Groups of Provinces may be formed and such groups may determine the Provincial subjects which they desire to take in common.

5. After the Constituent Assembly has decided the constitution for the All-India Federal Union as laid down in paragraph 2 above, the representatives of the Provinces may form groups to decide the Provincial constitutions for their group and, if they wish, a group constitution.

6. No major point in the All-India Federal Constitution which affects the communal issue shall be deemed to be passed by the Constituent Assembly unless a majority of the members of the community or communities concerned present in Assembly and voting are separately in its favour. Provided that in case there is no agreement on any such issue, it will be referred to arbitration. In case of doubt as to whether any point is a major communal issue, the Speaker will decide, or, if so desired, it may be referred to the Federal Court.

7. In the event of a dispute arising in the process of constitution-making, the specific issue shall be referred to arbitration.

8. The constitution should provide machinery for its revision at any time subject to such checks as may be devised. If so desired, it may be specifically stated that this whole constitution may be reconsidered after ten years.

CONGRESS REACTIONS TO MUSLIM LEAGUE DEMANDS

(Note by the Congress on the principles to be agreed upon as suggested on behalf of the Muslim League, dated 12th May 1946).

The approach of the Muslim League is so different from that of the Congress in regard to these matters that it is a little difficult to deal with each point separately without reference to the rest. The picture as envisaged by the Congress is briefly given in a separate note. From consideration of this note and the Muslim League's proposals the difficulties and the possible agreement will become obvious.

The Muslim League's proposals are dealt with below briefly :—

(1) We suggest that the proper procedure is for one Constitution-making body or Constituent Assembly to meet for the whole of India and later for groups to be formed if so desired by the Provinces concerned. The matter should be left to the Provinces and if they wish to function as a group they are at liberty to do so and to frame their own constitution for the purpose.

In any event Assam has obviously no place in the group mentioned, and the North-West Frontier Province, as the elections show, is not in favour of this proposal.

(2) We have agreed to residuary powers, apart from the central subjects, vesting in the Provinces. They can make such use of them as they like and, as has been stated above,

function as a group. What the ultimate nature of such a group may be cannot be determined at this stage and should be left to the representatives of the Provinces concerned.

(3) We have suggested that the most suitable method of election would be by single transferable vote. This would give proper representation to the various communities in proportion to their present representation in the legislatures. If the population proportion is taken, we have no particular objection, but this would lead to difficulties in all the Provinces where there is weightage in favour of certain communities. The principle approved of would necessarily apply to all the Provinces.

(4) There is no necessity for opting out of a Province from its group as the previous consent of the Provinces is necessary for joining the group.

(5) We consider it essential that the Federal Union should have a Legislature. We also consider it essential that the Union should have power to raise its own revenue.

(6 and 7). We are entirely opposed to parity of representation as between groups of Provinces in the Union executive or legislature. We think that the provision to the effect that no major communal issue in the Union constitution shall be deemed to be passed by the Constituent Assembly unless a majority of the members of the community or communities concerned present and voting in the Constituent Assembly are separately in its favour, is a sufficient and ample safeguard of all minorities. We have suggested something wider and including all communities than has been proposed elsewhere. This may give rise to some difficulties in regard to small communities, but all such difficulties can be got over by reference to arbitration. We are prepared

to consider the method of giving effect to this principle so as to make it more feasible.

(8) *This proposal is so sweeping in its nature that no government or Legislature can function at all. Once, we have safeguarded major communal issues other matters, whether controversial or not, require no safeguard. This will simply mean safeguarding vested interests of all kinds and preventing progress, or indeed any movement in any direction. We, therefore, entirely disapprove of it.*

(9) We are entirely agreeable to the inclusion of Fundamental Rights and safeguards concerning religion, culture and like matters in the constitution. We suggest that the proper place for this is the All-India Federal Union constitution. There should be uniformity in regard to these Fundamental Rights all over India.

(10) The constitution of the Union will inevitably contain provisions for its revision. It may also contain a provision for its full reconsideration at the end of ten years. The matter will be open then for a complete reconsideration. Though it is implied, we would avoid reference to secession as we do not wish to encourage this idea.

AUGUST RESOLUTION OF 1942

Text of the resolution adopted by the All-India Congress Committee on August 8, 1942 :—

“The All-India Congress Committee has given the most careful consideration to the reference made to it by the Working Committee in their resolution dated July 14, 1942 and to subsequent events, including the development of the war situation, the utterance of responsible spokesmen of the British Government, and the comments and criticisms made in India and abroad. The Committee approves of and endorses that resolution and is of opinion that events subsequent to it have given it further justification, and have made it clear that the immediate ending of British rule in India is an urgent necessity, both for the sake of India and for the success of the cause of the United Nations. The continuation of that rule is degrading and enfeebling India and making her progressively less capable of defending herself and of contributing to the cause of world freedom.

“The Committee has viewed with dismay the deterioration of the situation on the Russian and Chinese fronts and conveys to the Russian and Chinese peoples its high appreciation of their heroism in defence of their freedom. This increasing peril makes it incumbent on all those who strive for freedom and who sympathise with the victims of aggression, to examine the foundations of the policy so far pursued by the Allied Nations, which have led to repeated and disastrous failure. It is not by adhering to such aims and policies and methods that failure can be converted into

success, for past experience has shown that failure is inherent in them. These policies have been based not on freedom so much as on the domination of subject and Colonial countries, and the continuation of the imperialist tradition and method. The possession of empire, instead of adding to the strength of the ruling power, has become a burden and a curse. India, the classic land of modern Imperialism, has become the crux of the question, for by the freedom of India will Britain and the United Nations be judged, and the peoples of Asia and Africa be filled with hope and enthusiasm.

"The ending of British rule in this country is thus a vital and immediate issue on which depend the future of the war and the success of freedom and democracy. Free India will assure this success by throwing all her great resources into the struggle for freedom and against the aggression of Nazism, Fascism and Imperialism. This will not only affect materially the fortunes of the war, but will bring all subject and oppressed humanity on the side of the United Nations, and give these nations, whose ally India would be the moral and spiritual leadership of the world. India in bondage will continue to be the symbol of British Imperialism and the taint of that imperialism will affect the fortunes of all the United Nations.

"The peril of today, therefore, necessitates the independence of India and the ending of British domination. future promises or guarantees can affect the present situation or meet that peril. They cannot produce the needed psychological effect on the mind of the masses. Only the glow of freedom now can release that energy and enthusiasm of millions of people which will immediately transform the nature of the war.

"The A. I. C. C., therefore, repeats with all emphasis the demand for the withdrawal of the British Power from India. On the declaration of India's Independence, a Provisional Government will be formed and Free India will become an ally of the United Nations, sharing with them in the trials and tribulations of the joint enterprise of the struggle for freedom. The Provisional Government can only be formed by the co-operation of the principal parties and groups in the country. It will thus be a composite Government, representative of all important sections of the people of India. Its primary functions must be to defend India and resist aggression with all the armed as well as the non-violent forces at its command, together with its Allied Powers, and to promote the well-being and progress of the workers in the fields and factories and elsewhere, to whom essentially all power and authority must belong. The Provisional Government will evolve a scheme for a Constituent Assembly which will prepare a constitution for the Government of India, acceptable to all sections of the people. This constitution, according to the Congress view, should be a federal one, with the largest measure of autonomy for the federating units, and with the residuary powers vesting in these units. The future relations between India and the Allied Nations will be adjusted by representatives of all these free countries conferring together for their mutual advantage and for their co-operation in the common task of resisting aggression. Freedom will enable India to resist aggression effectively with the people's united will and strength behind it.

"The freedom of India must be the symbol of and prelude to the freedom of all other Asiatic nations under foreign domination. Burma, Malaya, Indo-China, the Dutch Indies, Iran and Iraq must also attain their complete freedom. It must be clearly understood that such of these countries as

are under Japanese control now must not subsequently be placed under the rule or control of any other colonial Power.

“While the A I C.C. must primarily be concerned with the independence and defence of India in this hour of danger, the Committee is of opinion that the future peace, security and ordered progress of the world demand a World Federation of free nations, and on no other basis can the problems of the modern world be solved. Such a World Federation would ensure the freedom of its constituent nations, the prevention of aggression and exploitation by one nation over another, the protection of national minorities, the advancement of all backward areas and peoples, and the pooling of the world’s resources for the common good of all. On the establishment of such a World Federation, disarmament would be practicable in all countries, national armies, navies and air forces would no longer be necessary, and a world federal defence force would keep the world peace and prevent aggression.

“An independent India would gladly join such a World Federation and co-operate on an equal basis with other countries in the solution of international problems.

“Such a federation should be open to all nations who agree with its fundamental principles. In view of the war, however, the Federation must inevitably, to begin with, be confined to the United Nations. Such a step taken now will have a most powerful effect on the war, on the people of the Axis countries, and on the peace to come.

“The Committee regretfully realizes, however, that despite the tragic and overwhelming lessons of the war and the perils that overhang the world, the Governments of few countries are yet prepared to take this inevitable step toward World Federation. The reactions of the British Government and the misguided criticisms of the foreign Press

also make it clear that even the obvious demand for India's independence is resisted, though this has been made essentially to meet the present peril and to enable India to defend herself and help China and Russia in their hour of need. The Committee is anxious not to embarrass in any way the defence of China or Russia, whose freedom is precious and must be preserved, or to jeopardise the defensive capacity of the United Nations. But the peril grows both to India and these nations, and inaction and submission to a foreign administration at this stage is not only degrading India and reducing her capacity to defend herself and resist aggression, but is no answer to that growing peril and is no service to the peoples of the United Nations. The earnest appeal of the Working Committee to Great Britain and the United Nations has so far met with no response, and the criticisms made in many foreign quarters have shown an ignorance of India's and the world's need, and sometimes even hostility to India's freedom, which is significant of a mentality of domination and racial superiority, which cannot be tolerated by a proud people conscious of their strength and of the justice of their cause.

"The A. I. C. C. would yet again, at this last moment, in the interest of world freedom, renew this appeal to Britain and the United Nations. But the Committee feels that it is no longer justified in holding the nation back from endeavouring to assert its will against an imperialist and authoritarian Government which dominates over it and prevents it from functioning in its own interest and in the interest of humanity. The Committee resolves, therefore, to sanction, for the vindication of India's inalienable right to freedom and independence, the starting of a mass struggle on non-violent lines on the widest possible scale, so that the country might utilize all the non-violent strength it has gathered during the last 22 years of peaceful struggle. Such

a struggle must inevitably be under the leadership of Gandhiji and the Committee requests him to take the lead and guide the nation in the steps to be taken.

"The Committee appeals to the people of India to face the dangers and hardships that will fall to their lot with courage and endurance, and to hold together under the leadership of Gandhiji and carry out his instructions as disciplined soldiers of Indian freedom. They must remember that non-violence is the basis of this movement. A time may come when it may not be possible to issue instructions or for instructions to reach our people, and when no Congress Committees can function. When this happens, every man and woman who is participating in this movement must function for himself or herself within the four corners of the general instructions issued. Every Indian who desires freedom and strives for it must be his own guide urging him on along the hard road where there is no resting place and which leads ultimately to the independence and deliverance of India.

"Lastly, whilst the A.I.C.C. has stated its own view of the future governance under a free India, the A.I.C.C. wishes to make it quite clear to all concerned that by embarking on a mass struggle it has no intention of gaining power for the Congress. The power, when it comes, will belong to the whole people of India."

PAKISTAN

Text of Resolution No. 1 passed at the 27th annual session of the All-India Muslim League held at Lahore on March 22, 23 and 24, 1940 :—

“While approving and endorsing the action taken by the Council and the Working Committee of the All India Muslim League, as indicated in their resolutions dated the 27th of August, 17th and 18th of September and 22nd of October 1939, and 3rd of February 1940 on the constitutional issue, this Session of the All India Muslim League emphatically reiterates that the scheme of federation embodied in the Government of India Act, 1935, is totally unsuited to, and unworkable in the peculiar conditions of this country and is altogether unacceptable to Muslim India.

“It further records its emphatic view that while the declaration dated the 18th of October 1939 made by the Viceroy on behalf of His Majesty’s Government is reassuring in so far as it declares that the policy and plan on which the Government of India Act, 1935, is based will be reconsidered in consultation with the various parties, interests and communities in India, Muslim India will not be satisfied unless the whole constitutional plan is reconsidered *de novo* and that no revised plan would be acceptable to the Muslims unless it is framed with their approval and consent.

“Resolved that it is the considered view of this Session of the All India Muslim League that no constitu-

tional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principles, viz., that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial readjustments as may be necessary, that the areas in which the Muslims are numerically in a majority as in the North-Western and Eastern zones of India should be grouped to constitute 'Independent States' in which the constituent units shall be autonomous and sovereign.

"that adequate, effective and mandatory safeguards should be specifically provided in the constitution for minorities in these units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them and in other parts of India where the Mussalmans are in a minority adequate, effective and mandatory safeguards shall be specifically provided in the constitution for them and other minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

"This Session further authorises the Working Committee to frame a scheme of constitution in accordance with these basic principles, providing for the assumption finally by the respective regions of all powers such as defence, external affairs, communications, customs and such other matters as may be necessary."

*THE CONGRESS RESOLUTION ON FUNDAMENTAL RIGHTS

The Congress is of opinion that to enable the masses to appreciate what 'Swaraj' as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress therefore, declares that any constitution which may be agreed to on its behalf should provide, or enable the Swaraj Government to provide for the following :

Fundamental Rights and Duties

- (1) Every citizen of India has the right of free expression of opinion, the right of free association and combination, and the right to assemble peacefully and without arms, for purposes not opposed to law or morality.
- (2) Every citizen shall enjoy freedom of conscience and the right freely to profess and practise his religion, subject to public order and morality.
- (3) The culture, language and script of the minorities and of the different linguistic areas shall be protected.
- (4) All citizens are equal before the law, irrespective of religion caste or sex.
- (5) No disability attaches to any citizen by reason of his or her religion, caste, creed or sex, in regard to public employment, office of power or honour and in the exercise of any trade or calling.

- (6) All citizens have equal rights and duties in regard to wells, tanks, roads, schools and places of public resort, maintained out of state or local funds or dedicated by private persons for the use of the general public.
- (7) Every citizen has the right to keep and bear arms, in accordance with regulations and reservations made in that behalf.
- (8) No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.
- (9) The State shall observe neutrality in regard to all religions.
- (10) The franchise shall be on the basis of universal adult suffrage.
- (11) The State shall provide for free and compulsory primary education.
- (12) The state shall confer no titles.
- (13) There shall be no capital punishment.
- (14) Every citizen is free to move throughout India and to stay and settle in any part thereof, to acquire property and to follow any trade or calling, and to be treated equally with regard to legal prosecution or protection in all parts of India.
- (II) (a) The organization of economic life must conform to the principle of justice, to the end that it may secure a decent standard of living.
healthy conditions of work, limited hours of labour, legislation and in other ways, a living wage,
- (b) The State shall safeguard the interests of industrial workers and shall secure for them, by suitable suitable machinery for the settlement of disputes

between employers and workmen, and protection against the economic consequences of old age, sickness and unemployment.

- (III) Labour to be freed from serfdom and conditions bordering on serfdom.
- (IV) Protection of women workers, and specially, adequate provision for leave during maternity period.
- (V) Children of school-going age shall not be employed in mines and factories.
- (VI) Peasants and workers shall have the right to form unions to protect their interests.

When India is ready, neither the British, nor the Rajas, nor any other combination of powers can keep her from her destined goal. I adhere to what I said in 1925, namely that all adults above a certain age, man or woman, who would contribute some manual labour to the State would be entitled to the vote. Thus a simple labourer would easily be a voter whereas a millionaire or a lawyer or a merchant and the like would find it hard if they did not do somebody labour for the State.

—Mahatma Gandhi.

THE CONGRESS ELECTION MANIFESTO 1945-46

Text of the "Manifesto containing the policy and programme of the Congress for the information and the guidance of the Congress candidates" in the General Elections to the Legislatures (1945-46) issued by the Working Committee of the Indian National Congress from Calcutta on December 11, 1945 :—

For sixty years the National Congress has laboured for the freedom of India. During this long span of years its history has been the history of the Indian people straining at the leash that has held them in bondage, ever trying to unloose themselves from it. From small beginnings it has progressively grown and spread in this vast country, carrying the message of freedom to the masses of our people in the towns as well as the remotest villages. From these masses it has gained power and strength and developed into a mighty organisation, the living and vibrant symbol of India's will to FREEDOM and INDEPENDENCE. From generation to generation it has dedicated itself to this sacred cause, and in its name and under its banner innumerable countrymen and countrywomen of ours have laid down their lives and undergone sufferings in order to redeem the pledge they had taken. By service and sacrifice it has enshrined itself in the hearts of our people ; by its refusal to submit to any dishonour to our nation it has built up a powerful movement of resistance to foreign rule.

The career of the Congress has been one of both constructive effort for the good of the people and of unceasing struggle to gain freedom. In this struggle it has faced numerous crises and come repeatedly into direct conflict with the armed might of a great Empire. Following peaceful methods, it has not only survived these conflicts but has gained new strength from them. After the recent 3 years of an unprecedented mass upheaval and its cruel and ruthless suppression, the Congress has risen stronger than ever and become more loved by the people by whom it has stood through storm and stress.

The Congress has stood for equal rights and opportunities for every citizen of India, man or woman. It has stood for the unity of all communities and religious groups and for tolerance and goodwill between them. It has stood for full opportunities for the people as a whole to grow and develop according to their own wishes and genius ; it has also stood for the freedom of each group and territorial area within the nation to develop its own life and culture within the larger framework, and it has stated that for this purpose such territorial areas or Provinces should be constituted, as far as possible, on a linguistic and cultural basis. It has stood for the rights of all those who suffer from social tyranny and injustice and for the removal for them of all barriers to equality.

The Congress has envisaged a free, democratic State with the fundamental rights and liberties of all its citizens guaranteed in the Constitution. This Constitution, in its view, should be a federal one with autonomy for its constituent units, and its legislative organs elected under universal adult franchise. The federation of

India must be a willing Union of its various parts. In order to give the maximum of freedom to the constituent units there may be a minimum list of common and essential federal subjects which will apply to all units, and a further optional list of common subjects which may be accepted by such units as desire to do so.

Fundamental Rights

The Constitution shall provide for fundamental rights, among them the following.

1. Every citizen of India has the right of free expression of opinion, the right of free association and combination, and the right to assemble peacefully and without arms, for a purpose not opposed to law or morality.

2. Every citizen shall enjoy freedom of conscience and the right freely to profess and practise his religion, subject to public order and morality.

3. The culture language and script of the minorities and of the different linguistic areas shall be protected.

4. All citizens are equal before the law, irrespective of religion, caste, creed or sex.

5. No disability attaches to any citizen by reason of his or her religion, caste, creed or sex, in regard to public employment, office of power of honour, and in the exercise of any trade or calling.

6. All citizens have equal rights in regard to wells, tanks, roads schools and places of public resort, maintained out of State or local funds, or dedicated by private persons for the use of the general public.

7. Every citizen has the right to keep and bear arms, in accordance with regulations and reservations made in that behalf.

8 No person shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered, or confiscated, save in accordance with law

* 9. The State shall observe neutrality in regard to all religions

10. The franchise shall be on the basis of universal adult suffrage.

11. The State shall provide for free and compulsory basic education.

12. Every citizen is free to move throughout India and to stay and settle in any part thereof, to follow any trade or calling and to be treated equally with regard to legal prosecution or protection in all parts of India

The State shall further provide all necessary safeguards for the protection and the development of the backward or suppressed elements in the population, so that they might make rapid progress and take a full and equal part in national life. In particular, the State will help in the development of the people of the tribal areas in a manner most suited to their genius, and in the education and social and economic progress of the scheduled classes.

Content of Freedom

A hundred and fifty years and more of foreign rule have arrested the growth of the country and produced numerous vital problems that demand immediate solution. Intensive exploitation of the country and the people during this period has reduced the masses to the depths of misery and starvation. The country has not only been politically kept under subjection and humiliated, but has also suffered economic, social, cultural and spiritual degradation. During the years of war this process of exploitation by irresponsible authority in utter disregard of Indian interests and

views, and an incompetence in administration reached a new height leading to terrible famine and widespread misery. There is no way to solving any of these urgent problems except through "freedom" and "independence." The content of political freedom must be both economic and social.

The most vital and urgent of India's problems is how to remove the curse of poverty and raise the standard of the masses. It is to the well-being and progress of these masses that the Congress has directed its special attention and its constructive activities. It is by their well-being and advancement that it has judged every proposal and every change, and it has declared that anything that comes in the way of the good of the masses of our country must be removed. Industry and agriculture, the social services and public utilities, must be encouraged, modernised and rapidly extended in order to add to the wealth of the country and give it the capacity for self-growth, without dependence on others. But all this must be done with the primary object of benefiting the masses of our people and raising their economic, cultural and spiritual level, removing unemployment, and adding to the dignity of the individual.

For this purpose it will be necessary to plan and co-ordinate social advance in all its many fields, to prevent the concentration of wealth and power in the hands of individuals and groups, to prevent vested interests inimical to society from growing, and to have social control of the mineral resources, means of transport and the principal methods of production and distribution in land, industry and in other departments of national activity, so that Free India may develop into a Co-operative Commonwealth. The State must, therefore, own or control key and basic industries and services, mineral resources, railways, waterways, shipping and other means of public transport. Currency and ex-

change, banking and insurance, must be regulated in the national interest.

Land and Agriculture

Though poverty is widespread in India, it is essentially a rural problem, caused chiefly by over-pressure on land and lack of other wealth-producing occupations. India, under British rule has been progressively ruralised, many of her avenues of work and employment closed, and a vast mass of the population thrown on the land, which has undergone continuous fragmentation, till a very large number of holdings have become uneconomic. It is essential, therefore, that the problem of the land should be dealt with in all its aspects. Agriculture has to be improved on scientific lines and industry has to be developed rapidly in its various forms large-scale, medium and small so as not only to produce wealth, but also to absorb people from the land. In particular, cottage industries have to be encouraged both as whole-time and part-time occupations. It is essential that in planning and the development of industry, while maximum wealth production for the community should be aimed at, it should be borne in mind that this is not done at the cost of creating fresh unemployment. Planning must lead to maximum employment, indeed to the employment of every able-bodied person. Landless labourers should have opportunities of work offered to them and be absorbed in agriculture or industry.

The reform of the land system which is so urgently needed in India involves the removal of intermediaries between the peasant and the State. The rights of such intermediaries should, therefore, be acquired on payment of equitable compensation. While individualist farming or peasant proprietorship should continue, progressive agri-

culture as well as the creation of new social values and incentives require some system of co-operative farming suited to Indian conditions. Any such change can, however, be made only with the goodwill and agreement of the peasantry concerned. It is desirable, therefore, that experimental co-operative farms should be organised with State help in various parts of India. There should also be large State farms for demonstrative and experimental purposes.

Balanced Economy

In the development of land and industry there has to be a proper integration and balance, between rural and urban economy. In the past, rural economy has suffered, and the town and city have prospered at the cost of village. This has to be righted and an attempt made to equalise, so far as possible, the standards of life of town dwellers and villagers. Industry should not be concentrated in particular provinces, so as to give a balanced economy to each province and it should be decentralised, as far as this is possible without sacrifice of efficiency. Both the development of land and of industry, as well as the health and well-being of the people, require the harnessing and proper utilisation of the vast energy that is represented by the great rivers of India, which is not only largely running to waste but is often the cause of great injury to the land and the people who live on it. River commissions should be constituted to undertake this task in order to promote irrigation and ensure an even and continuous supply of water, to prevent disastrous floods and soil erosion, to eradicate malaria, to develop hydro-electric power, and in other ways to help in raising the general standard of life, especially in the rural areas. The power resources of the country have to be developed rapidly in this and other ways in order to provide the necessary foundation for the growth of industry and agriculture.

Social Security And Services

Adequate arrangement should be made for the education of the masses with a view to raising them intellectually, economically, culturally and morally, and to fit them for the new forms of work and services which will open out before them. Public health services which are essential for the growth of the nation should be provided for on the widest scale and in this, as in other matters, the needs of the rural areas should receive special attention. These should include special provisions for maternity and child welfare. Conditions should thus be created in which every individual has an equal opportunity for advance in every field of national activity and there is social security for all.

Science in its innumerable fields of activity has played an ever-increasing part in influencing and moulding human life and will do so in even greater measure in the future. Industrial, agricultural and cultural advance, as well as national defence, depend upon it. Scientific research is, therefore, a basic and essential activity of the State and should be organised and encouraged on the widest scale.

In regard to labour, the State shall safeguard the interests of industrial workers and shall secure for them a minimum wage and a decent standard of living, proper housing, hours of work and conditions of labour in conformity, as far as economic conditions in the country permit, with international standards, suitable machinery for the settlement of disputes between employers and workmen, and protection against the economic consequences of old age, sickness, and unemployment. Workers shall have the right to form Unions to protect their interests.

Rural indebtedness has in the past crushed the agricultural population, and though, owing to various causes in recent years this has grown less, the burden still continues

and must be removed, cheap credit must be made available through co-operatives. Co-operatives should also be organised for other purposes both in rural and urban areas. In particular, industrial co-operatives should be encouraged, as being especially suited for the development of small-scale industry on a democratic basis.

Urgent Problems

While the immediate and urgent problems of India can only be effectively tackled by joint and planned attack on all fronts political, economic, agricultural, industrial and social—certain needs are of paramount importance today. Owing to the gross incompetence and mismanagement of the Government an incredible amount of suffering has been caused to the people of India. Millions have died of starvation, and scarcity of food and clothing is still widespread. Corruption in the services and in all matters pertaining to the supply and control of the vital necessities of life is rampant and has become intolerable. The urgent problems require immediate attention.

In international affairs the Congress stands for the establishment of a World Federation of Free Nations. Till such time as such a federation takes shape, India must develop friendly relations with all nations and particularly with her neighbours. In the Far East, in South-East Asia and in Western Asia, India has had trade and cultural relations for thousands of years and it is inevitable that with freedom she should renew and develop these relations. Reasons of security and future trends of trade also demand closer contacts with these regions. India, which has conducted her own struggle for freedom on a non-violent basis, will always throw her weight on the side of world peace and co-operation. She will also champion the freedom of all other subject nations and peoples for only on the basis of this freedom

and the elimination of Imperialism everywhere can world peace be established.

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DATES TO REMEMBER

IN

INDIA'S CONSTITUTIONAL HISTORY

- 1858.—Proclamation of Queen Victoria.
1861.—Indian Councils Act I
1862.—Indian Councils Act II.
1909.—Minto-Morley Reforms.
1919.—Montague-Chelmsford Reforms.
1921 —Inauguration of the Central Assembly.
1930.—Simon Commission's Report.
1931.—Gandhi-Irwin Agreement
1935 —Government of India Act, 1935.
1942.—Cripps Proposals.
1945 —British Parliamentary Delegation.
1946 —Cabinet Mission's Proposals and the Interim Government.
Dec 9, 1946.—Meeting of the Constituent Assembly.
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THE INDEPENDENCE PLEDGE

Since the year 1930, the Congress party has been observing January 26 each year as the Independence Day, following the adoption, at the annual session in 1929 at Lahore, of complete independence as the Congress party's goal. On January 26, an independence pledge is repeated at public meetings held under Congress auspices all over India. Text of the pledge for Jan. 26, 1946 :—

We believe that it is an inalienable right of the Indian people, as of any other people, to have freedom and enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth, we believe also that if any Government deprives a people of these rights and oppresses them, the people have a further right to alter it or to abolish it. The British Government in India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically culturally and spiritually. We believe, therefore, that India must sever the British connection and attain Purna Swaraj or Complete independence.

We recognize that the most effective way of gaining our freedom is not through violence. India has gained strength and self-reliance and marched a long way to Swaraj following peaceful and legitimate methods, and it is by adhering to these methods that our country will attain independence.

We pledge ourselves anew to the independence of India and solemnly resolve to carry out non-violently the struggle for freedom till Purna Swaraj is attained.

▲We believe that non-violent action in general and preparation for non-violent direct action in particular, require successful working of the constructive programme kept before the country by Gandhiji and accepted by the Congress, and in particular of khadi, communal harmony and removal of untouchability. We shall see every opportunity of spreading goodwill among fellowmen without distinction of caste or creed. We shall endeavour to raise from ignorance and poverty those who have been neglected and to advance in every way the interests of those who are considered to be backward and suppressed. We know that though we are out to destroy the imperialistic system, we have no quarrel with Englishmen, whether officials or non-officials. We know that distinction between the caste Hindus and Harijans must be abolished and Hindus have to forget these distinctions in their daily conduct. Such distinctions are a bar to non-violent conduct. Though our religious path may be different, in our mutual relations we will act as children of Mother India, bound by common nationality and common political and economic interest.

Charkha and khadi are an integral part of our constructive programme, for the resuscitation of the 700,000 villages of India and for the removal of the grinding poverty of the masses. We shall, therefore, use for our personal requirements nothing but khadi, and so far as possible, products of village handicrafts only and endeavour to make others do likewise. We shall also try to work to the best of our ability some item or items of the constructive programme.

We pay our grateful homage to thousands of our comrades who faced grave hardships, suffered humiliations and sacrificed their lives and property in the last struggle. Their sacrifice will always remind us of the duty never to rest until we have attained our goal.

We reaffirm the resolution passed by the All-India Congress Committee on August 8, 1942. It demands the immediate withdrawal of the British power from India in the interest as much of India as of world peace and freedom for all.

This day we pledge ourselves again to a disciplined observance of Congress principles and policies and to keep in readiness to respond to the call of the Congress for carrying on the struggle for the independence of India.

THE RESOLUTION OF THE CONGRESS WORKING COMMITTEE ON THE CABINET DELEGATION'S PROPOSALS

(Passed on June 26 and ratified by the All-India Congress Committee on July 7 1946).

"On May 24, the Working Committee passed a resolution on the statement dated May 16, issued by the British Cabinet Delegation and the Viceroy. In this resolution they pointed out some defects in the statement and gave their own interpretation of certain parts of it.

"Since then the Committee have been continuously engaged in giving earnest consideration to the proposals made on behalf of the British Government in the statements of May 16 and June 16 and have considered the correspondence in regard to them between the Congress President and the members of the Cabinet Delegation and the Viceroy.

"The Committee have examined both these sets of proposals from the point of view of the Congress objective of immediate independence and the opening out of the avenues leading to the rapid advance of the masses, economically and socially, so that their material standards may be raised and poverty, malnutrition, famine and the lack of the necessities of life may be ended, and all the people of the country may have the freedom and opportunity to grow and develop according to their genius. These proposals fell short of these objectives, yet the Committee considered them earnestly in

all their aspects because of their desire to find some way for the peaceful settlement of India's problem and the ending of the conflict between India and England.

"The kind of independence Congress has aimed at is the establishment of a united, democratic Indian Federation, with a central authority which would command respect from the nations of the world, maximum provincial autonomy and equal rights for all men and women in the country. The limitation of the central authority as contained in the proposals, as well as the system of grouping of provinces, weakened the whole structure and was unfair to some provinces such as the N.-W F Province and Assam, and to some of the minorities, notably the Sikhs. The Committee disapproved of this. They felt, however, that, taking the proposals as a whole, there was sufficient scope for enlarging and strengthening the central authority and for fully ensuring the right of a province to act according to its choice in regard to grouping, and to give protection to such minorities as might otherwise be placed at a disadvantage. Certain other objections were also raised on their behalf, notably the possibility of non-nationals taking any part in the constitution-making. It is clear that it would be a breach of both the letter and spirit of the statement of May 16 if any non-Indian participated in voting or standing for election to the Constituent Assembly.

"In the proposals for an interim Government, contained in the statement of June 16, the defects related to matters of vital concern to the Congress." Some of these have been pointed out in the letter dated June, 25, of the Congress President to the Viceroy. The provisional Government must have power, authority and responsibility and should function in fact, if not in law, as a *de facto* independent Government leading to the full independence to come. The members of such a Government can only hold themselves responsible to

the people and not to any external authority. In the formation of a provisional or other Government Congressmen can never give up the national character of the Congress or accept an artificial unjust parity, or agree to the veto of a communal group. The Committee are unable to accept the proposals for the formation of an interim Government as contained in the statement of June 16.

"The Committee have, however, decided that the Congress should join the proposed Constituent Assembly, with a view to framing the constitution of a free, united and democratic India.

"While the Committee have agreed to Congress participation in the Constituent Assembly, it is in their opinion essential that a representative and responsible provisional National Government be formed at the earliest possible date. The continuation of authoritarian and unrepresentative Government can only add to the suffering of famishing masses and increase discontent. It will also put in jeopardy the work of the Constituent Assembly, which can only function in a free environment.

"The Working Committee recommend accordingly to the All-India Congress Committee, and for the purpose of considering the ratifying of this recommendation, they convene an emergent meeting of the A -I.C.C. in Bombay on July 6 and 7, 1946."

CONGRESS LEADERS ON CONSTITUENT ASSEMBLY

MAHATHMA GANDHI

(*A.-I.C.C. July 7, 1946*)

I know that there are many defects in the Constituent Assembly scheme but then it is in your power to improve it or to bury it. The Constituent Assembly scheme looks like an iron ore. We can convert it into pure gold by our own efforts. Whatever loopholes there are can be remedied. My advice to you is to accept the scheme even in spite of its defects, for as Satyagrahis we have no reason to be afraid of anything. I feel that the scheme is capable of improvement and therefore my urge is in favour of its acceptance.

We have asked the British to quit India. This does not mean that we wish to ill-treat them. We want the British to quit honourably and smoothly. The Constituent Assembly proposal¹ is to enable us to make the British quit India. I, therefore, feel that we should accept the Constituent Assembly scheme in spite of its defects, as we are competent to remedy the defects. I know it is a British-sponsored scheme, but have not the British openly stated that they have done this with an open mind and without any reservation to enable Indians to frame their own constitution for a free and Independent India."

A True Satyagrahi's Spirit

The proposed Constituent Assembly, I know, is not a free assembly. There are many defects in the scheme but

since we have been fighting for the last so many years, why should we be afraid of the defects in the Constituent Assembly scheme. We can fight the Constituent Assembly itself if we find the defects are unremediable. As true Satyagrahis and fighters, we have no right to be afraid of any hardships or difficulties in our way. I was, therefore surprised when I heard Jaiprakash Narain saying yesterday that it was dangerous and useless to go into the Constituent Assembly. Supposing we go into the Constituent Assembly and lose, why should we be afraid? A true Satyagrahi never thinks in terms of losing. No one can defeat him. He can never be deceived or cheated by anyone.

MAULANA ABUL KALAM AZAD

(A.-I.C.C. July 7, 1946)

Commending the resolution to the House for its acceptance the Maulana Sahib said :

The plan envisaged by the Cabinet Mission in their White Paper of May 16 consists of two aspects, political and communal. As far as the political implications of the proposals are concerned, the proposals make it clear that the Constituent Assembly will have the fullest right to frame a Constitution for a free and independent India and such a constitution will be accepted by the British Government. We have been given the freedom to decide whether we wish to remain within the British Empire or be completely independent. It is for us to decide this vital question and the British Government does not wish to dictate to us in this respect as they have hitherto been doing.

In my first interview with the Cabinet Mission I made it absolutely clear to the Delegation that the Constituent Assembly we wished to summon should have unfettered freedom to frame a constitution for a free and independent

India. The British Government has accepted this demand and has made it clear that the freedom of India is not under question and it has been granted without any question. Why then should we raise doubts in the face of such unequivocal declarations by the British Government ?

The Cabinet Mission's proposals also have once and for all times cleared all doubts about the question of the division of India. These proposals have made it clear beyond a shadow of doubt that India shall remain undivided a single unit with a strong Central Government composed of federating units.

Our main demands having thus been accepted by the Cabinet Delegation, you will agree the Working Committee had to accept the proposals after pointing out the defects in them. This is what the Working Committee has done by its resolution of June 26. My answer to those critics who say that we should not have accepted this proposal is that if we rejected this proposal now, it may not be possible at a later date in the future to secure a proposal acceptable to us.

The only new feature of the Cabinet Mission's proposals to which the Congress had not agreed fully was the one relating to grouping. The Working Committee has therefore, made it clear that there should be no compulsion in the matter of grouping. The provinces should be free to decide whether they wish to join a particular group or not. We are confident that the interpretation we have put on the grouping clause is the correct interpretation.

PANDIT NEHRU

(A.I.C.C. July 7, 1946).

We have agreed to go into the Constituent Assembly, and we have agreed to nothing else. It is true that in going to the Constituent Assembly, inevitably, we have agreed

to a certain process of going into it, i.e., election of the candidates to the Constituent Assembly. What we do there, we are entirely and absolutely free to determine. We have committed ourselves to no single matter to anybody. Naturally even though one might not agree to commit himself there is a certain compulsion of facts which makes one accept this thing or that thing. I do not know what that might be in a particular context. But the nature of compulsion of facts would be not of the British Government's desires or intents but how to make the Assembly a success and how to avoid its breaking-up. That will be certainly a very important consideration. But the British Government do not appear there at all.

When the Congress had stated that the Constituent Assembly was a sovereign body, the Cabinet Mission's reply was, it was more or less yes, subject to two considerations. Firstly, proper arrangement for minorities, and the other a treaty between India and England. I wish the Cabinet Mission had stated both these matters are not controversial. It is obvious the minorities question has to be settled satisfactorily. It is also obvious that if there is any kind of peaceful change-over in India it is bound to result in some kind of treaty with Britain.

What exactly that treaty will be I cannot say. But if the British Government presume to tell us that they are going to hold anything in India because they do not agree either in regard to minorities or in regard to treaty, we shall not accept that position. It would become 'casus belli.' We shall have no treaty if they seek to impose anything upon us and we shall tear up any treaty they try to impose. If they treat us as equals and come to terms there will be a treaty. But if there is the slightest attempt at imposition, we shall have no treaty.

In regard to minorities it is *our* problem and we shall no doubt succeed in solving it. We accept no outsider's interference in it. Certainly not the British Government's interference in it and therefore *these two limiting factors to the sovereignty of the Constituent Assembly are not accepted by us.*

How to make the job in the Constituent Assembly a success or not is the only limiting factor. It does not make the slightest difference what the Cabinet Mission thinks or does in the matter.

States and Constituent Assembly

Pandit Nehru reiterated the Congress stand in respect of States' participation in the Constituent Assembly and said : "Our position has been and is that elected representatives of the States people must go there. The rulers say that they should nominate representatives. What their stand today is, I do not know. But, obviously, we cannot accept that position. The real difficulty is that apart from the rulers' position, the governments in the Indian States are so unrepresentative that a proper procedure must be adopted to make them representative and representatives of such governments should go to the Constituent Assembly."

Pandit Nehru's attention was drawn to some of the bigger States like Hyderabad not demobilizing their war-time armies. Pandit Nehru said : "It is highly undesirable for all these small, separate armies to continue. They are bound not to continue under the Union Government of India. There will be only one central army. May be during the intervening period of transition some of these may carry on."

SRI JAIPRAKASH NARAIN

(A-I C C July 7, 1946)

I feel the acceptance of the Constituent Assembly scheme also foreshadows danger. The Constituent Assembly proposed by the British is far from our original idea which was given to us by our Rashtrapathi Pandit Nehru. This Constituent Assembly is the creation of the British and it can never bring us the freedom that we have been fighting for. The British Government may promise to accept the constitution drawn up by the Constituent Assembly but then the British Government themselves will pull the wires in such a manner as not to allow us to frame a constitution that we all desire for a free and independent India. Whenever a difference of opinion arises between the Congress and the League in the Constituent Assembly, and differences are bound to arise, then we have to go to the British Government for a solution. And do you think we can expect fairplay from the British in such a situation? If on the contrary, the Constituent Assembly is the outcome of the strength of the people we can solve all our difficulties by an appeal to our people.

I am aware that all these and other defects must have been considered by the Working Committee before it came to the final decision it has. But I see no reason why we should accept such a defective proposal, knowing the pitfalls in advance and also knowing our own real strength. Any Constituent Assembly can succeed only if it works in a free atmosphere and there can be no free atmosphere in India so long as British power remains and the British troops continue to be stationed in India.

The only thing we can do is to tell the British Government that we do not want such a restricted and curbed constituent Assembly. We shall weaken ourselves, if we accept the British Government's proposals.

MAULANA ABUL KALAM AZAD ANSWERS CRITICS
(A.-I C C. July 7, 46).

Maulana Abul Kalam Azad dealing with the various criticisms made against the resolution by those who opposed the resolution, said—No one can say that the British Government sent the Cabinet Mission to India to offer us the Constituent Assembly as a free gift. We have secured the Constituent Assembly as a result of our struggle and sacrifices during the past 50 years. The final struggle that was launched by Mahatma Gandhi in 1942 did, of course, hasten the pace of our freedom movement.

The British people and their Labour Government have realized that we the people of India are determined to have our freedom and nothing on earth can prevent us from achieving our goal. The British Government had, therefore, to make up their mind whether they should transfer power peacefully and quit or allow us to take it forcefully. They have chosen the wiser course.

I am unable to agree with those who say that by going into the Constituent Assembly we shall be weakening the Congress organization. Why should anyone think that by going into the Constituent Assembly we shall weaken ourselves? Whatever difficulties may stand in our way we will overcome them as we are determined to reach our final goal. We will not in any event sacrifice any of our fundamental principles. *If unfortunately any insuperable difficulties crop up in direct conflict with our fundamental principles, we shall not hesitate to kill the Constituent Assembly.*

Opposition speakers have exhibited a fear complex—~~vague~~ fear of the unknown. I ask if there is any problem which has no difficulties inherent in it. It is no use approaching any problem with a fear complex. If we do this we shall not be able to achieve anything at all.

In the proposed Constituent Assembly the Congress will have a definite majority and in spite of this we have fears as to how we are going to settle the fate of the country. We have won our struggle for freedom through sheer sacrifice and suffering and I will ask you now not to jettison and fritter away the fruits of victory by adopting a gloomy outlook and fear complex

It has been argued that the Central Government will not be a strong one unless it has within its fold economic relations and finance. These questions will be settled by the Constituent Assembly. I do agree that the Central Government can never be effective unless it has the means to support itself. The Congress will never tolerate a weak Centre.

I want to make it clear that those who say that the Constituent Assembly is a trap are making a great mistake. There is no question of the Constituent Assembly being a trap. We asked for a Constituent Assembly to frame a constitution for a free and independent India and the Cabinet Mission agreed to our demand. How then can anyone call it a trap?

I want to emphasize that by accepting the Constituent Assembly proposal we shall lay at rest one of the longest standing communal problems. The Muslim League has been demanding all these years the division of India into Hindustan and Pakistan and two separate Constituent Assemblies to draw up separate constitutions. Both these things have been abandoned by the Muslim League by its acceptance of the Cabinet Mission's proposals of May 16. The result of this proposal is that there shall be one United India and one Constituent Assembly with one Central Government. I ask if this is not a great achievement. If you reject the Constituent Assembly as the Opposition wants you to do, I ask if we shall not be adding to our problems and

quarrel. Victory has come into our hands and, please, do not turn it into a defeat (Cheers). The door to the Constituent Assembly is open to enable us draw up our own constitution. Please enter it and complete our task of framing our own constitution (Applause)

(The resolution was then put to vote. Two hundred and four members voted in favour of it, while 51 members voted against it. It was declared carried amidst applause.)

PUNDIT NEHRU REPLIES CRITICS

(A. I. C. C. July 7, 1946)

Winding up the proceedings of the Committee, Pandit Jawaharlal Nehru answered some of the criticisms of the opposition speakers.

Pandit Nehru said : We have been talking of independence for a long time. Different interpretations are given of what that independence means. The Viceroy and the Muslim League also speak of the independence of India. But Congress idea of independence is certainly different from that of the Muslim League and the Viceroy.

Republic of India

Our idea of independence is that there must be absolutely no foreign domination in India, and India may even break her connexions with the British. We want to establish a Republic of India.

Arguments have been advanced on the one side that this is a very satisfactory Constituent Assembly—something that we have been asking and we have got. On the other hand it has been stated that this Constituent Assembly is a futile thing imposed upon us and to which we should not attach much importance. If I am asked to give my own point of view I would say it is not obviously some-

thing which we have desired and worked for. There are many difficulties and snags, and the scales are weighted against us. On the other hand it is obvious also that it is not so bad.

What will be the outcome of this Assembly ? It may be that it does not function for long ; it breaks up. It may be we may get something out of it, and we go ahead and produce some kind of a constitution which is desirable and workable.

All these things are possible, but it seems to me rather fantastic for the Cabinet Mission to tell us that after 10 years we are going to do this or that, it is fantastic and I cannot imagine anybody laying down any rule for India 10 years hence. When India is free India will do just what she likes.

I do think that some time or other in the future we may have to summon our own proper revolutionary Constituent Assembly. That does not mean we should not take advantage of this and work it out for our own advantage. If we do not succeed in the Constituent Assembly we change our tactics to suit whatever form we want to do.

There is a good deal of talk of Cabinet Mission's long-term plan and short-term plan. So far as I can see it is not a question of our accepting any plan, long or short. It is only a question of our agreeing to go into the Constituent Assembly. That is all and nothing more than that. We will remain in that Assembly so long as we think it is good to India and we will come out when we think it is injuring our cause and then offer our battle. We are not bound by a single thing except that we have decided for the moment to go to the Constituent Assembly not certainly to deliver fine speeches but to build something to overcome some of our problems.

As the discussion in the House was about the proposed Constituent Assembly, Pandit Nehru said that he was reminded of other Constituent Assemblies. Perhaps the comparison was not justified. One hundred and fifty-seven years ago a constituent assembly called the "States General" was called in France. It was convened by the King of France himself. He was an autocratic and foolish King and he soon got into trouble with that Assembly and ultimately within a few years the head of that King was cut off. India, of course, would not cut off other people's heads. Again there was the case of the American colonies "Do you remember, that even after the declaration of war against England there were colonies which continued to send humble petitions of loyalty to the English King?" It is only after a hard war things changed.

Now in regard to criticisms against the resolution it is strange that one should be afraid of a thing because at the beginning it is not exactly to one's liking. It seems to me that we have begun to attach far too much importance on gestures, words and slogans and generally to certain heroic attitude. It is a dangerous thing. Remember we are a great nation. We are no longer a tiny people begging for freedom at the hands of the British. We are on the verge of freedom.

SRI JAIPRAKASH NARAIN

(July 12, 1946)

I think it undesirable for us to go to the so-called Constituent Assembly. Doing so would distort the perspective in which we wish to view these constitutional developments, distract revolutionary energy from its proper course and add to the general complacency and smugness prevalent, if not in the country, at least among overwhelmingly large numbers of Congressmen.

But not going to the Constituent Assembly is merely a negative attitude. The question is what may be a positive policy for today. First and foremost, it is necessary to combat smugness, and false hopes and to dispel the illusion that discussions in the so-called Constituent Assembly would give us freedom and democracy. The perspective of a struggle, of a final all-out struggle, with the British Power should not be allowed to be dimmed or pushed into the background by the impending constitutional talks.

An essential part of the preparation for a struggle is to organize a country-wide campaign to place the positive aspects of freedom and democracy before the people so that they might be able to put the proposed Constituent Assembly to test, have it ultimately prorogued and make a demand for a real sovereign Constituent Assembly and fight to enforce it.

President Nehru has put a new interpretation on the British-sponsored Assembly. The people should be able to demand of their President that either the Assembly he commends to them should declare India immediately an independent Republic, establish a free provisional Government sending away the British Viceroy, all the armed British forces and other British personnel, and every penny of British capital, and ensure the unity of the country and a free social democracy, or denounce the whole British plan and bring the Congress again to the path of revolutionary action.

There are only two ways of utilizing the Constituent Assembly once the Congress has entered it. One is to make every necessary compromise to ensure that a settlement is reached with all the British stooges and under-fascistic forces in it and struggle for freedom. This path the Congress can accept only to commit suicide. The other path is to try

to turn the Assembly into a battle-ground for freedom and democracy which would mean its speedy dissolution and the return of the Congress to its right path.

Thus in every case the only right course today for Congressmen is to think and prepare in every possible way for the final struggle for freedom. Every other activity must supplement it and not divert the country from it.

SRI RAJAGOPALA CHARI

I am sure there will be a babel of tongues, all kinds of disputes and quarrels, and they will all be published. Now quarrels are not kept secret as they used to be some years ago. We will keep on quarrelling until you will say that we must be saved from this Constituent Assembly. But I am sure we will get along with the work and frame a constitution.

I am sure we will frame a constitution, for, mind you, Britain is tired of quarrelling with us. But nevertheless they will quarrel and wrangle and persist and get a proper treaty made on so many matters. It might be easier to get an agreement with the British than it has been in the case of internal communal matters. That is because the British are an experienced and practical people.

But we are all still talking of principles, and we do not know where the principle should begin and where it should end. This shows our dogmatic attitude, which is also in its own way admirable. But the British are not like that. The Constituent Assembly might go on for two months, or it might go on for two years. But ultimately it is bound to end well.

Let me tell you, mere constitutions do not bring liberty. What we should achieve is real solid liberty for our country.

We might have a beautiful constitution and yet our people might be slaves. That the people should have liberty is a different thing from the mere forging of a constitution. We can fight the British and all the obstructionists and somehow or the other forge a constitution. Yet liberty for the people depends upon the efficient working of that constitution.

My unshakable faith in India's liberation remains unimpaired. I am leaving in your safe hands your National Tricolour, our National honour, and the best traditions of Indian warriors. I have no doubt whatsoever that you, the vanguard of India's Army of Liberation, will sacrifice everything, even life itself, to uphold India's National honour, so that your comrades who will continue the fight elsewhere may have before them your shining example to inspire them at all times.

Netaji Subhaschandra Bose
24th April, 1945.

K. M. MUNSHI ON THE CONSTITUENT- ASSEMBLY

(A Press Interview)

Q : Is the Constituent Assembly a Sovereign Body ?

A : The Constituent Assembly, in my opinion, is a sovereign body for several reasons.

First, neither the foreign rulers of this country nor any foreigners are members of the Assembly.

Secondly, it reflects the proportionate strength of the people without the weightage which British Imperialism gave to certain communities for its own benefit.

Thirdly, subject to a treaty with Britain and the protection of minorities it is charged with the duty of creating a new State.

Fourthly, it will be able to set up a provisional sovereign authority in India which will negotiate and enter into a treaty with Britain, the first function of the provisional Government of India and then bring into existence the first free government in India.

Q : Is it necessary that there should be a revolution before a sovereign constituent Assembly comes into existence ?

A : No. The Central European countries had their own constituent assemblies after the foreign yoke was overthrown by the war. In some countries like France and Germany constituent assemblies were called into existence by the people themselves to establish a new state. In Switzerland

and America, the States came together to form a Constituent Assembly while in Canada and Australia constituent assemblies were brought into existence without a war or a violent revolution and with British goodwill. In view of the advancement of humanity we must work for a change over of national power by peaceful means through constituent assemblies convoked as a matter of friendly adjustment. The pre-requisite of a Constituent Assembly is not a bloody revolution but the developing of sufficient popular power to bring about a willingness on the part of a foreign ruler to transfer power.

Q : What is the primary condition for the success of the Constituent Assembly ?

A : The first condition, to my mind, is that its proceedings should be held *en camera* and that the Indian Press and the World Press should contribute to its success by keeping silent.

The first great Constituent Assembly, the Federal Conventions of the United States, which met in 1787, as a first step wisely decided that nothing spoken in the House be printed or otherwise published or communicated without leave. This pledge was honestly kept by the members.

George Washington, the President, gave a firm warning, "I must entreat the gentlemen to be more careful lest our transactions get into the newspapers and disturb the public repose by premature speculations." The delegates foreswore their desire for newspaper notoriety and would not be influenced by the fear as to what their constituencies might think. As Washington said "It is too probable that no plan that we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we come forward and defend our work ? Let us raise a standard to

which the wise and just can repair. The event is in the hand of God." The records of the convention were published 55 years after.

In Canada the Constituent Assembly chose to sit *en camera* from the very beginning. In Australia they kept their sittings open to the Press with the result that their efforts proved unsuccessful. Ultimately the Constituent Assembly sat *en camera* and its efforts were successful.

But in these days of wide newspaper publicity the patriotic press of India will have also to co-operate.

Q : *What do you think will be the time required for the Constituent Assembly to frame the constitution ?*

A : If the members of the Constituent Assembly religiously sit down to then work with a determination to frame the Constitution it cannot take more than 6 months. If, however, time is spent in debates instead of heart to heart negotiations on essentials, it may be one year, two or more. But the world situation requires that the Constituent Assembly should finish its deliberations as early as possible in order that a National Government, truly representative may take its share, in the reconstruction of the world.

Q : *Do you envisage any difficulties in the construction of the several clauses in the state paper ?*

A : Personally I see no difficulty. All parties have agreed to the State Paper of May 16, and I see no reason why the document should not be taken as a charter within the four corners of which we have to settle our future constitution. No doubt there will be differences on interpretations. But after all such differences have to be solved by an arbiter, either the Chairman of the Constituent Assembly or the Chairman in consultation with the Federal Court. Whatever the view of a clause or two, in my opinion, the

State Paper gives us immense power and it would be a historic disaster if we failed to work the Constituent Assembly to a successful end. Once the parties meet with the fixed intention of settling things, things would be decided very rapidly.



The Cabinet Mission had honestly suggested a solution which, in their opinion, was fair. The beauty of the State Paper was that it contained no compulsion. Naturally, after acceptance, the clauses became obligatory on the accepting parties. But any party could refuse acceptance. Thus, if Assam, in the east and Baluchistan, in the West, rejected grouping, no power on earth could compel them under the Cabinet Mission's Paper.

—*Mahatma Gandhi*

MEERUT CONGRESS RESOLUTION ON THE CONSTITUENT ASSEMBLY

(Nov. 21, 1946)

"On the eve of the summoning of the Constituent Assembly to frame a constitution for India, this Congress declares that it stands for an independent sovereign republic wherein all powers and authority are derived from the people, and for a constitution wherein social objectives are laid down to promote freedom, progress and equal opportunity for all the people of India, so that this ancient land attain its rightful and honoured place in the world and make its full contribution to the promotion of world peace and the progress and welfare of mankind, and directs all Congressmen to work to this end."

Speaking on the resolution, Pandit Jawaharlal Nehru said : "The resolution says that the constitution which we frame should be for an independent sovereign republic. It is clear that free India will be a republic and not a monarchy. Though it was well understood, it had never been stated clearly. We have reached a stage when the Constituent Assembly is shortly meeting to frame a constitution for India. There are only two points mentioned in the resolution. The first is that free India will be a republic and the second that it should be a kind of a socialistic constitution."

"I am not enamoured of this Constituent Assembly. But we have accepted it and should make the best use of

it for our benefit. I do not expect that this will be the last Constituent Assembly. When we attain freedom, we shall have another Constituent Assembly.

“One good thing about this Assembly is that the British have no direct representation though we cannot prevent their indirect representation in it. If we do not hold the Constituent Assembly now, the atmosphere will deteriorate. The League is welcome to join the Constituent Assembly. But let me make it clear that whether they come in or keep out, we shall go on. We will go to the Constituent Assembly fully prepared and fully organized, to establish an independent republic. We are not going in to fight over petty things.”

We believe that it is the inalienable right of the Indian people to have freedom and to enjoy their toil and have the necessities of life so that they may have full opportunities of growth. We believe also that if any Government deprives people of these rights and oppresses them, the people have a further right to alter it or to abolish it.

*From pledge taken on
Independence Day 26th Jan. 1946*

INDIAN STATES & CONSTITUENT ASSEMBLY

(*H. H. the Nawab of Bhopal, Chancellor of the Chamber of Princes to Viceroy, dated June 19.*)

The Standing Committee of Princes gave most careful consideration at their recent meetings in Bombay to the proposals of the Cabinet Mission and your Excellency in regard to the long-range constitutional arrangements and for the interim period. Their views are embodied in the enclosed statement which has been released to the Press and of which an advance copy was forwarded to Sir Conrad.

(Sir Conrad Corfield, Political Adviser to the Viceroy in his capacity as Crown Representative). I would invite your Excellency's particular attention to the attitude taken by the Standing Committee of Princes on the question of internal reforms in the states as indicated in Paragraph 4 of the Press statement.

2. The Standing Committee desired me to convey to the members of the Cabinet Mission and to your Excellency their grateful appreciation of the genuine efforts made by them, notwithstanding obvious difficulties, to reach as far as possible an agreed settlement of the Indian Constitutional problem. The Standing Committee are of the view that the plan provides the necessary machinery for the attainment by India of independence as well as a fair basis for further negotiations.

They welcome the Declaration of the Cabinet Mission in regard to Paramountcy but consider certain adjustment

necessary for the interim period which have already been indicated by them. Final decisions of the States and of the Standing Committee, as will doubtless be appreciated, will depend on the completed picture which may emerge from the proposed negotiations and discussions.

3. The Standing Committee desire in particular to convey their gratitude to your Excellency for your valuable advice and assistance during these negotiations to safeguard the legitimate interest of the States, and they would request that their grateful thanks may also be conveyed to Sir Conrad Corfield who, as your Excellency knows, has been very helpful. The Committee feel confident that with your support the various matters which have been left undefined or for future negotiations and discussions will be settled on merits to the satisfaction of the States.

Negotiating Committee

4. The Standing Committee have decided, in response to your Excellency's invitation, to set up a Negotiating Committee whose personnel is given in the enclosed list. (This list is not reproduced as it is at present confidential). The Committee did their utmost to keep the number small as desired by your Excellency but they felt that it would not be possible for them to reduce that number. I shall be grateful if I am informed as early as possible of the time and place when this Committee is expected to meet, and the personnel of the corresponding committee which may be set up by the representatives of British India on the Constituent Assembly.

The result of these negotiations are proposed to be considered by the standing Committee of Princes, the Committee of Ministers and the Constitutional Advisory Committee whose recommendations will be placed before a

General Conference of Rulers and Representatives of States. The decision on the question whether the states should or should not join the Constituent Assembly will be taken by that Conference and will depend on the result of the forthcoming negotiations.

~~British India~~ *And The States*

5. A list of representatives of the States for the proposed Committee on matters of common concern to British India and the States is also enclosed. It was necessary to accommodate on it various important interests and regions of States and to include persons with special knowledge of subjects which are likely to be taken up at the deliberation of this Committee.

It is understood, however, that all the members of this Committee would not be required to attend every meeting, and that ordinarily not more than five or six, whatever the number from British India, would be invited by the Chancellor to participate in the discussions according to the nature of subjects on the agenda.

Exchange of Views

Provision will also have to be made for the co-option of representatives from any State or group of States, not directly represented on the Committee, when any special questions particularly affecting them are under discussion. Draft rules for the conduct of business and other details relating to this Committee will be discussed with Sir Conrad and it is believed that your Excellency may also have to consult the Interim Government in regard to these matters.

6. In the meantime as desired by your Excellency, questions relating to the exercise of Paramountcy in the

interim period are proposed to be pursued with Sir Conrad and any outstanding points will be submitted to your Excellency. The Standing Committee have authorized me to conduct further negotiations in regard to these matters with a view to reaching early decisions

It is difficult for us to realise the intricacies and complexities of the vast fabric of Government in India Native and British and the extent to which it is emboided in the history of the past and interwoven with modes of thought and belief not shared by our western civilisation * We cannot undertake to apply to it a few simple universal formulas on which Western democracy professes to rest.

*Extract from Stephen Leacock's
Our British Empire*

PARAMOUNTCY SHOULD VEST WITH UNION GOVERNMENT

(By Sir N. Gopalaswamy Iyengar)

It is to be regretted that the Cabinet Delegation have so far not stated their ideas as regards Indian States with the clarity and directness which characterize their award on some of the fundamentals of the new constitution of India.

The pronouncements of the Delegation on the question of Indian states have to be gathered from their statement of May 16, the memorandum entitled 'State, Treaties and Paramountcy' which they claim to have presented to the Chancellor of the Chamber of Princes and which they released for publication on May 22.

Delegation's Proposals

If these two documents are scrutinized with care the following emerge as being the proposals favoured by the Delegation in regard to Indian States :

(1) There should be a Union of India embracing both British India and the Indian States.

(2) No Indian State can keep out of the Indian Union, any more than a province can. In other words, the right of non-accession to the Union is not conceded either to a province or to an Indian State. In implementing its membership of the Union, it is open, however, to an Indian State to exercise the option either of entering into a federal relationship with the Government of the rest of India or of entering into some other particular political arrangement with it.

(3) All Indian States should cede to the Union the subjects of Foreign Affairs ; Defence and Communications.

(4) Indian States which elect to enter into a federal relationship with the rest of India will have representation on the Executive and the Legislature of the Union, and will thereby effectively participate in the administration of the Union subjects. The political relationship alternative to federal relationship must necessarily partake of the nature of paramountcy exercised by the Federal Government. This has necessarily to be so in view of the fact that under the proposed Union constitution, as now, Foreign Affairs and Defence, in any case, have to be administered for the whole of India by a Union Centre.

Grouping of Provinces

(5) The Provisions regarding the grouping of provinces in the award rule out the possibility of Indian States being grouped with the provinces placed in any one of the three sections, A, B and C. The States are to participate in the constitution-making body only at the final stage, that is, at the stage of framing a constitution for the Union Centre.

(6) The award provides for no right of secession from the Union in favour of an Indian State or of a province. A province can, when its first elected assembly meets, opt itself out of a group, but not out of the Union. An Indian State may elect to keep out of the federal structure but not out of the Union.

Under the award a province is given the right by a majority vote of its legislature to call for a reconsideration of the terms of the constitution of the Union or of a group after an initial period of 10 years and at 10 yearly intervals thereafter. This only means that a province can propose an amendment of the Union or Group Constitution ; it cannot by the unilateral act. either of its legislature or even of its

people, secede from i.e., opt itself out of the Union or Group. Its proposal for an amendment could not take effect obviously except with the approval of the Union and the Group as a whole and unless it is carried into accordance with the special procedure that will undoubtedly be prescribed in the Union Constitution for all amendments to it.

(7) During the period of the Interim Government, British paramountcy will continue. It will end with the attainment of independence by India.

(8) During the interim period negotiations should be set on foot between British India and the Indian States in regard to the future regulation of matters of common concern, especially in the economic and financial field. If these negotiations are not completed by the time the new constitutional structure for India comes into being, arrangements should be entered into for the continuation of the existing state of things in regard to these matters until the new agreements are completed.

Transfer of Paramountcy

Presumably British paramountcy over Indian States will also be brought under review during the period of the Interim Government with a view to its being replaced, in the case of some States, by a federal relationship with the new Government, and, in the case of other States, by some other political arrangement which would serve as a substitute for British paramountcy. The implication is justified that unless one or other of these forms of political relationship takes the place of British paramountcy the unity of India could not be maintained.

The memorandum is in many ways an extraordinary State document. Those who have some knowledge of the previous history of the exercise of paramountcy, 'jurisdic-

tion and the attitude that the Government of British India and H.M.G. have in the past adopted in this connection should have been surprised at some of the astounding statements made in this memorandum. I am not quite sure whether these statements had received the approval of all those who have been speaking to the Delegation on behalf of the States, though there is reason to think that the memorandum was not sprung as a surprise upon those spokesmen.

Not a Contractual Relation

Paramountcy is not a mere contractual relationship. The limits of its exercise cannot under present conditions be defined. The jurisdiction has grown up independently of treaties, engagements and sanads. Any rights or privileges derivable from such treaties, engagements and sanads can be exercised only subject to paramountcy.

No treaty, engagement or sanad can be construed so as to exempt an Indian State from subordination to the Paramount Power, which has by usage and the necessities of the case, to take what measures it sees fit for the safety of the interests of India as a whole or of the interests of the States themselves and their people. The paramountcy of the British Crown and H.M.G. may cease, but until every Indian State has established an effective form of constitutional Government and has entered the new federal structure of India substantially on the same footing as the Provinces, paramountcy jurisdiction cannot altogether be eliminated. "The only question, therefore, for consideration in whom this jurisdiction, so long as its presence continues to be necessary, should vest after British power has been eliminated from this country. Obviously it should vest in what will under the new constitution be the Federal Government of India.

Jurisdiction of Paramountcy.

The new Federal Government of India will be a successor of the present Government of British India modified to the extent that it will be by the accession of such States as enter the federal structure. In the usual course paramountcy jurisdiction should, therefore, devolve upon the Government of the new Union and there is no insuperable obstacle in the way of such devolution, especially in circumstances which, it is hoped, will effect a peaceful transfer of power."

It is vitally important that political parties who decide to take office in the Interim Government should ensure that the administration of paramountcy during the interim period will be so regulated as to ensure close collaboration and a unified policy between the Governor-General in Council on the one side and the Crown Representative and his Political Adviser on the other. Otherwise conflicts will arise and deadlocks not easily got over will bring this to a standstill, in respect of the administration of the functions of the Crown in relation to Indian States.

LONDON DECISION

The following statement was issued by the British Government last night i.e., 6th December 1946, on the Conversations with the Indian leaders :—

“The conversations held by His Majesty’s Government with Pandit Jawaharlal Nehru, Mr. M. A. Jinnah, Mr. Liaquat Ali Khan and Sardar Baldev Singh came to an end this evening as Pandit Nehru and Sardar Baldev Singh are returning to India to-morrow morning.

“The object of the conversations has been to obtain the participation and cooperation of all parties in the Constituent Assembly.

“It is not expected that any final settlement could be arrived at, since the Indian representatives must consult their colleagues before any final decision is reached.

“The main difficulty that has arisen has been over the interpretation of Paragraph 19, (5) and (8) of the Cabinet Mission’s statement of May 16, relating to meetings in sections, which runs as follows :—

Power to opt out

“19. (5) :—“these sections shall proceed to settle provincial constitutions for the provinces included in each section and shall also decide whether any group constitution shall be set up for those provinces and if so with what provincial subjects the group should deal. Provinces should have power to opt out of the groups in accordance with the provisions of sub-clause (8) below.

“Paragraph 19. (8) :—‘As soon as the new constitutional agreements have come into operation, it shall be open to any province to elect to come out of any group in which it has been placed. Such a decision shall be taken by the Legislature of the province after the first general election under the new Constituent Assembly.

Majority vote

“The Cabinet Mission have throughout maintained the view that the decisions of the sections should, in the absence of an agreement to the contrary, be taken by a simple majority vote of the representatives in the sections. This view has been accepted by the Muslim League, but the Congress have put forward a different view. They have asserted that the true meaning of the statement, read as a whole is that the provinces have the right to decide both as to grouping and as to their own constitutions.

“His Majesty’s Government have had legal advice which confirms that the statement of May 16 means what the Cabinet Mission have always stated was their intention. This part of the statement, as so interpreted, must, therefore, be considered an essential part of the scheme of May 16 for enabling the Indian people to formulate a constitution which His Majesty’s Government would be prepared to submit to Parliament. It should, therefore, be accepted by all parties in the Constituent Assembly.

Federal Court

“It is, however, clear that other questions of interpretation of the statement of May 16 may arise and His Majesty’s Government hope that if the Council of the Muslim League are able to agree to participate in the Constituent Assembly, they will also agree, as have the Congress, that the Federal

Court should be asked to decide matters of interpretation that may be referred to them by either side and will accept such a decision, so that the procedure, both in the Union Constituent Assembly and in the sections, may accord with the Cabinet Mission's Plan.

"On the matter immediately in dispute, His Majesty's Government urge the Congress to accept the view of the Cabinet Mission in order that a way may be opened for the Muslim League to reconsider their attitude. If in spite of this reaffirmation of the intention of the Cabinet Mission, the Constituent Assembly desires that this fundamental point should be referred for a decision of the Federal Court, such a reference should be made at a very early date.

"It will then be reasonable that the meetings of the sections of the Constituent Assembly should be postponed until the decision of the Federal Court is known.

Rules not to be imposed

"There has never been any prospect of success for the Constituent Assembly except upon the basis of the agreed procedure. Should the constitution come to be framed by a Constituent Assembly in which a large section of the Indian population had not been represented. His Majesty's Government could not, of course contemplate—as the Congress have stated they would not contemplate—forcing such a constitution upon any unwilling parts of the country."

MR. HODSON'S VIEWS

Mr. H. V. Hodson, late Commissioner of Reforms in India, in the course of a paper on "India's Constitutional Task" read before The East India Association in London said :

"It is true that in form the conduct and fortunes of the Constituent Assembly rest in Indian hands. The Governor-General has no part in it. But in practice who could doubt that his advice and aid will be constantly needed if innumerable obstacles to the success of the Assembly are to be overcome."

Mr. Hodson expressed the opinion that the Constituent Assembly, even if it suffered no major breakdown, was going to take a long time to complete its task. On the mere mechanics of the job confronting the Assembly, not counting any of the delays due to inevitable political and communal difficulties and deadlocks, he estimated that it would take the best part of two years to complete. A parallel with the task of treaty-making in Europe was not inexact in view of the magnitude of the task.

In reference to the position of Indian States, Mr. Hodson expressed emphatically the view that implicit in the promise of independence for India had been the policy that States must be on an organic relationship with British India. The treaties with States were in his opinion not matters of international law but domestic arrangements under the Crown liable to be affected by a change of British policy for India as a whole. They were in the present stage on a footing with British pledges to minorities, in that both must be given a fair chance and a reasonable chance of self-defence.

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